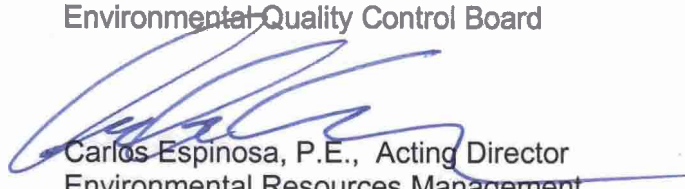


Memorandum

Date: November 2, 2006

To: Hon. Chairperson and Members
 Environmental Quality Control Board

From: 
 Carlos Espinosa, P.E., Acting Director
 Environmental Resources Management

Subject: Pre-hearing Memorandum
 Cutler Properties, LC
 Hearing of: 11/09/06

This petition was continued at the hearing of October 12, 2006 at the Petitioner's request. The petition comes before the Board as a request by Petitioner, Cutler Properties, LC for a variance from the requirements of Section 24-48 of the Code of Miami-Dade County, Florida, which requires in pertinent part that any dredging or filling work proposed in a Class I Permit application shall comply with at least one of six specific criteria contained therein. The project being proposed for the subject property would consist of filling coastal wetlands for a residential development and would not be consistent with any of the aforesaid criteria. The subject property is located at 18551 Old Cutler Road, Miami, Florida.

The Petitioner is seeking a class I permit for the filling of approximately 33.12 acres of jurisdictional wetlands supporting halophytic vegetation in order to construct a residential development. The property is approximately 138 acres in size and is located immediately east of Old Cutler Road, south of SW 184th street, and borders Biscayne Bay on the east. The property contains approximately 8.82 acres of uplands located along Old Cutler Road. The remainder of the property consists of jurisdictional wetlands with two distinct vegetative cover types. There are approximately 33.39 acres of exotics dominated wetlands located immediately east of the uplands, herein referred to as the lower quality wetlands. This area is dominated primarily by the presence of Brazilian-pepper (*Schinus terebinthifolia*) and Napier grass (*Pennisetum purpureum*). To the east of the lower quality wetlands, there are approximately 93.15 acres of higher quality forested wetlands that border Biscayne Bay. This area is dominated by white, black, and red mangroves (*Laguncularia racemosa*, *Avicennia germinans*, and *Rhizophora mangle*) and buttonwood trees (*Conocarpus erectus*). This portion of the property also contains a network of old mosquito ditches. In addition, five narrow finger-like projections totaling approximately 3.0 acres containing mangroves that are associated with remnant drainage ditches protrude into the lower quality wetlands area.

Section 24-48.3(2) of the Code of Miami-Dade County, Florida requires that in addition to applicable evaluation factors set forth in Section 24-48.3(1)(a-i), dredging or filling work proposed in Class I permit applications shall comply with at least one of the six listed criteria in Section 24-48.3(2) as listed below:

- 1) minimum dredging and spoiling for public navigation or public necessity
- 2) an alteration of physical conditions as may be necessary to enhance the quality or utility of adjacent waters
- 3) minimum dredging and filling for the creation and maintenance of marinas, piers, docks and attendant navigational channels
- 4) minimum dredging and filling as is necessary for the elimination of conditions hazardous to the public health or for the elimination of stagnant waters

- 5) minimum dredging and filling as is necessary to enhance the biological, chemical or physical characteristics of adjacent waters
- 6) a physical modification necessary to protect public or private property.

Dredging and filling of wetlands supporting halophytic vegetation for construction of a residential development does not meet any of the stated criteria. Therefore, the Petitioner must either modify the project to avoid filling coastal wetlands or obtain a variance from Section 24-48.3(2) of the Code in order to obtain a Class I permit.

The Department of Environmental Resources Management's (DERM) review of historic aerial photographs of the subject site indicates that the western half of the subject property was in continuous agricultural use from 1963 through as recently as 1992. The farming appears to have been abandoned when the property suffered the affects of Hurricane Andrew in 1992. Following 1992, the site re-vegetated naturally with predominantly desirable tree species in the eastern higher quality wetlands portions of the property, and herbaceous exotics dominated vegetation in the western lower quality wetlands portions of the property.

Section 24-48.4 of the Code of Miami-Dade County, Florida requires that potential adverse environmental impacts for a proposed project be avoided and/or minimized. In order to minimize project related impacts, the Petitioner proposes to limit the footprint of the proposed development primarily to the lower quality exotics dominated wetlands. The proposed project does include impacts to approximately 3 acres of mangroves/drainage ditches associated with the narrow finger-like projections that protrude into the lower quality wetlands area. However, DERM staff believe an attempt to preserve these narrow strips of wetlands surrounded by development would not be practical. Instead, DERM recommended, and the Petitioner has proposed to provide an equivalent area of enhancement to the lower quality wetlands as a buffer along the western edge of the higher quality wetlands.

The Petitioner has agreed to provide a thirty (30) foot wide buffer between the proposed development and the existing higher quality wetlands. This 1.76 acre area will be located in the lower quality wetlands and utilized as a mitigation area for the direct impacts to the higher quality wetlands. This area will be planted and maintained with native halophytic herbaceous wetland species in order to enhance the existing lower quality wetlands. The Petitioner will also provide onsite enhancement of an additional 1.51 acres of lower quality wetlands for a total of 3.27 acres of onsite wetlands enhancement. DERM staff recommends that the Petitioner's mitigation plan include planting of the 1.51acre wetland enhancement area with native halophytic tree species including mangrove and buttonwood trees.

The proposed work requires a standard form Class I permit application with review by the Board of County Commissioners at a public hearing. The total amount of mitigation required has not yet been determined, however Petitioner's mitigation plan for the unavoidable impacts associated with this project includes onsite enhancement of 3.27 acres of lower quality wetlands, preservation mitigation credit for transfer to a government entity, specifically Miami-Dade County, the entire remainder of the property located east of the proposed development including but not limited to the 93.15 acre mangrove preserve. The Petitioner proposes to provide the balance of any additional required mitigation through the purchase of mitigation credits from Florida Power & Light Company Inc.'s Everglades Mitigation Bank.

Lastly, the aforementioned property is currently under an administrative Consent Agreement between the Department and the previous property owner for unauthorized clearing of wetlands that occurred during an earlier surveying effort. In order to ensure compliance with conditions of the Consent

Agreement and complete resolution of the violation, DERM shall require that the Petitioner agree to fulfill the remaining requirements of the subject Consent Agreement that relate to performance, maintenance, and successful restoration of the impacted areas. See paragraphs 8 and 11 of the Consent agreement between Miami-Dade County and Trebloc Corp. (see attached).

Based on the foregoing, staff believes that granting the requested variance to allow the Petitioner to fill wetlands supporting halophytic vegetation for the construction of a residential development will not be detrimental to the public health, welfare and safety, will not create a nuisance, and will not materially increase the level of pollution in this County. Therefore, staff recommends approval of the petition, subject to the following conditions.

1. The Petitioner shall provide no less than a thirty (30) foot wide buffer totaling approximately 1.76 acres in the form of a wetland enhancement area between the existing higher quality wetlands and the proposed development fill pad.
2. The Petitioner shall provide a revised mitigation plan that is acceptable to DERM which includes, but is not limited to, the planting and maintenance of the 1.51 acre mitigation area with halophytic tree species consisting of mangrove and buttonwood trees, the planting and maintenance of the 1.76 acre mitigation area with native halophytic herbaceous wetland species, and any proposal to purchase FPL Everglades Mitigation Bank credits must consist of saltwater wetland mitigation credits.
3. The Petitioner shall transfer ownership of all portions of the subject property lying east of the development line including but not limited to the 93.15 acre mangrove preserve to Miami Dade County within twelve (12) months of commencing work under the Miami-Dade County class I permit for this proposed project.
4. The Petitioner shall be responsible for performing the ongoing maintenance, reporting requirements, and any supplemental planting necessary for the successful restoration of impacts to the higher quality wetlands areas, as described in paragraphs 8 and 11 of the Consent Agreement between Miami-Dade County and the previous property owner, Trebloc Corp. This requirement shall terminate upon transfer of the subject property to Miami-Dade County.

Attachments:

- Exhibit A- Survey
- Exhibit B- Aerial Photo
- Exhibit C- Section Map
- Exhibit D-Copy of signed and sealed project drawings
- Exhibit E: Copy of Consent agreement between Miami-Dade County and Trebloc Corp., executed January 22, 2004