MEMORANDUM

Agenda Item No. 7(E)

(Second Reading 10-6-15)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: May 5, 2015

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

SUBJECT: Ordinance regarding area of Critical Environmental Concern and land development regulations; allowing use of severable use rights where authorized by municipalities under certain conditions; amending process for establishment of fee schedule; amending Chapter 33B, Article II, Division 3 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Audrey M. Edmonson and Commissioner Sally A. Heyman.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

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Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance regarding area of Critical Environmental Concern and Land Development Regulations

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The proposed ordinance amends Chapter 33B, Article II, Division 3 of the Code of Miami-Dade County relating to the area of critical environmental concern and land development regulations allowing use of severable use rights where authorized by municipalities under certain conditions. Implementation of this ordinance will not have a fiscal impact on the County.

Jack Osterholt
Deputy Mayor

Fis06315

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

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

SUBJECT: Agenda Item No. 7(E)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
✓	**6 weeks required between first reading and public hearing**
✓	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(E)
10-6-15

ORDINANCE NO. _____

ORDINANCE REGARDING AREA OF CRITICAL ENVIRONMENTAL CONCERN AND LAND DEVELOPMENT REGULATIONS; ALLOWING USE OF SEVERABLE USE RIGHTS WHERE AUTHORIZED BY MUNICIPALITIES UNDER CERTAIN CONDITIONS; AMENDING PROCESS FOR ESTABLISHMENT OF FEE SCHEDULE; AMENDING CHAPTER 33B, ARTICLE II, DIVISION 3 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 33B, Article II, Division 3 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Chapter 33B AREAS OF CRITICAL ENVIRONMENTAL CONCERN

* * *

Article II. - EAST EVERGLADES

* * *

DIVISION 3. SEVERABLE USE RIGHTS

* * *

Sec. 33B-41. Purpose.

In order to protect, enhance and preserve the public and private resources of the East Everglades and to achieve the goals of East Everglades Resources Planning Project, it is necessary and

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

appropriate to create a system of land management and development regulations that will provide the owners of land located within the East Everglades Area of Critical Environmental Concern a development alternative to on-site development whereby they can secure a beneficial use of their property through off-site development without the expense and cumulative environmental degradation of on-site development. If the environmental integrity of the East Everglades and the surface and ground water resources it represents can be protected, then the capacity of Miami-Dade County as a whole to sustain and support new growth and development is maintained. This division is intended to facilitate the protection of the East Everglades resources and thereby permit growth and development in the County through a management program that ensures an equitable distribution, throughout the County >>and the municipalities therein<<, of the economic impacts and burdens of protecting the public and private resources of the East Everglades. The board hereby incorporates by reference Miami-Dade County Ordinance 81-1 [Division 1 of Article II of this chapter].

Sec. 33B-42. Definitions.

(a) *Developer* means any person undertaking development.
(b) *Development* means the carrying out of any use permitted on land by applicable zoning and environmental regulations (e.g., Chapters 9, 24 and 33 of Metropolitan Miami-Dade County Code) or making any material change in the use or character of land, including but not limited to excavation, rock plowing or other alteration of the topographic, geographic or hydrologic character of land in preparation or as a part of the commencement of new agricultural activities, the placement of structures on land; the clearing of land or a change in the intensity of use of land. Development shall include the ancillary activities such as road building and sewer construction that occur along with or as a result of any proposed land use. When appropriate to the context, development refers to the act of developing or the result of development.
(c) *Development bonus* means an increase in the intensity and/or density of development that can be carried out per unit of land.
(d) *Density* means the number of minimum size lots, units, or other measure of development intensity that can be located or developed on a specified unit of land.
(e) *Land* means the earth, water and air above, below or on the

surface.

(f) *Owner* means the person with legal and/or equitable title to real property.

(g) *Parcel of land* means any quantity of land capable of being described with such definiteness that its location and boundaries may be established which is designated by its owner or developer as land to be used as a unit.

(h) *Person* means any and all persons, including but not limited to an individual, firm, association, organization, partnership, business trust, trust, corporation or company.

(i) *Severable use right* means a specially allocated, lawful permitted right of use of real property which inures to the benefit of the owner of a parcel of land, as created under this division.

(j) *Transferor parcel* means a parcel of land from which a severable use right has been severed.

(k) *Unimproved land* means land which is not developed for or used for residential purposes. In the event that a residential dwelling unit is located on a parcel of land which exceeds the minimum lot area required under the provisions of Chapter 33 of the Metropolitan Miami-Dade County Code on January 14, 1981, the area in excess of the minimum lot area shall be considered unimproved.

Sec. 33B-43. Severable use rights established.

(a) The owners of unimproved land located in the East Everglades Area of Critical Environmental Concern shall have severable use rights in the amount set out in subsections (b), (c) and (d) of this section. The severable use rights allocated in this section may be used to obtain a development bonus in accordance with the provisions of this division for the development of suitable land in unincorporated Metropolitan Miami-Dade County >>or in the incorporated areas where permitted in accordance with this division<<, other than land located in the East Everglades Area of Critical Environmental Concern.

(b) Severable use rights are hereby established in the following ratios:

(1) In Management Area 1 as established in the ordinance declaring the East Everglades to be an area of critical environmental concern—One (1) severable use right per five (5) gross acres;

(2) In Management Area 3B as established in the ordinance declaring the East Everglades to be an area of critical environmental concern—One (1) severable use

right per twelve (12) gross acres;

(3) In Management Area 3C as established in the ordinance declaring the East Everglades to be an area of critical environmental concern—One (1) severable use right per forty (40) gross acres.

(c) Notwithstanding the allocation of severable use rights in subsection (b) of this section, the owners of parcels of land in Management Areas 1, 3B and 3C, that were legally entitled to a density of one (1) dwelling unit as of January 14, 1981, under the provisions of Chapter 33 of the Metropolitan Miami-Dade County Code, but have less than the acreage specified in subsection (b) for a whole SUR, shall be entitled to an allocation of a single severable use right provided that:

(1) The subject parcel of land was not in common ownership with any adjacent parcel of land on, or after, January 14, 1981; and

(2) The subject parcel of land is registered with the Department of Planning and Zoning of Miami-Dade County within one (1) year of the effective date of this division, provided that at the time of registration the applicant can demonstrate that he or she was entitled to develop a single dwelling unit under the rules, regulations and ordinances of Miami-Dade County that were in effect on January 14, 1981.

(d) In the event that the owners of parcels of land fail to register for the severable use right provided for in subsection (c) of this section, they shall only be entitled to a fractional severable use right at the ratio specified in subsection (b) of this section. For example, in Management Area 1:

(1) A tract of two and five-tenths (2.5) acres shall have five-tenths (0.5) SUR,

(2) A tract of seven (7) acres shall have one (1) SUR,

(3) A tract of twelve (12) acres shall have two (2) SUR.

(e) The Director of the >>Miami-Dade County<< Department of >>Regulatory and Economic Resources or its successor department<< [[~~Planning and Zoning of Miami-Dade County~~]] shall have the authority to establish a fee schedule >>by implementing order approved by the Board of County Commissioners<< [[~~following a public hearing~~]], to establish other administrative items necessary to implement the intent of this division.

Sec. 33B-44. Transfer of severable use rights >>in unincorporated and incorporated areas<<.

>>(a) *Use in unincorporated area.*<< East Everglades severable use rights shall be freely transferable and may be used to secure a development bonus for the development of any parcel of land located within the land use regulatory jurisdiction of Metropolitan Miami-Dade County, provided that the development density or intensity of the parcel proposed for development complies with the standards and requirements of Section 33B-45 of this division. The purchase of severable use rights shall vest legal rights in the purchaser to utilize said rights within unincorporated Miami-Dade County. The purchaser of severable use rights shall have the affirmative duty to demonstrate that an instrument of conveyance or the use of a severable use right has been recorded in the chain of title in accordance with Section 33B-45(f) of this division.

>>(b) *Use in incorporated areas.* East Everglades severable use rights shall also be freely transferable and may be used to secure a development bonus for the development of any parcel of land located within the land use regulatory jurisdiction of any municipality that allows the use of such rights subject to the requirements set forth in this division, provided that the development density or intensity of the parcel proposed for development complies with the standards and requirements of Section 33B-45 of this division. A participating municipality shall provide for the purchase of severable use rights to vest legal rights in the purchaser to utilize said rights within that municipality. The purchaser of severable use rights shall have the affirmative duty to demonstrate that an instrument of conveyance or the use of a severable use right has been recorded in the chain of title in accordance with Section 33B-45(f) of this division.<<

Sec. 33B-45. Development of severable use rights.

(a) The use of severable use rights for development in accordance with the provisions of this section shall be development permitted as of right under the provisions of Chapter 33 of the Metropolitan Miami-Dade County Code >>and the applicable municipal zoning regulations<<.

(b) Severable use rights may only be used to secure a development bonus [[~~for the development of lands located~~]] in unincorporated portions of Metropolitan Miami-Dade County >>, or in municipalities that allow the use of severable use rights in accordance with this division, for the development of lands<< which are designated in the Comprehensive Development Master Plan metropolitan development pattern map >>or the applicable

municipal comprehensive plan<< for urban development, that is, within all of the development patterns except agriculture and open land, parks and recreation, and environmental sensitivity, >>or their municipal equivalents<<.

(c) Development of severable use rights shall be in accordance with all of the requirements of the Metropolitan Miami-Dade County Code >>and the applicable municipal code<<, except as specifically modified by subsection (g) of this section.

(d) The developer must demonstrate that he or she is the bona fide owner of the severable use right to be entitled to the development bonus.

(e) The developer must demonstrate that the severable use rights proposed for development allocated to the transferor parcel of land under this division have not previously been used to secure a development bonus.

(f) The developer must demonstrate that an instrument of conveyance or the use of the severable use right has been recorded in the chain of title of the parcel of land from which the severable use rights is transferred and that such instrument restricts the use of the transferor lands to nonresidential uses.

(g) Residential use of severable use rights. Except as provided in paragraph (g)(15) below and notwithstanding the provisions of any other code or regulation of Miami-Dade County >>or the applicable municipality<<, the developer of a parcel of land may develop, in addition to the number of dwelling units authorized in each zoning district, one (1) dwelling unit for each severable use right, provided that the total development proposed does not exceed the following limitations:

(1) In the EU-2 District:

a. Minimum lot size—Four (4) acres;

b. Minimum frontage—One hundred sixty-five (165) feet;

c. Maximum coverage—Twenty (20) percent.

(2) In the EU-1C District:

a. Minimum lot size—Two (2) acres;

b. Minimum frontage—One hundred twenty-five (125) feet.

(3) In the EU-1 District:

a. Minimum lot size—Thirty-two thousand five hundred (32,500) square feet;

b. Minimum frontage—One hundred ten (110) feet.

(4) In the EU-S District:

a. Minimum lot size—Twenty thousand (20,000) square feet;

b. Minimum frontage—One hundred ten (110) feet.

(5) In the EU-M District:

a. Minimum lot size—Twelve thousand five hundred (12,500) square feet;

b. Minimum frontage—One hundred (100) feet.

(6) In the RU-1 District:

a. Minimum lot size—Six thousand (6,000) square feet;

b. Minimum frontage—Sixty (60) feet;

c. Maximum coverage—Forty (40) percent.

(7) In the RU-2 District:

a. Minimum lot size—Six thousand (6,000) square feet;

b. Minimum frontage—Sixty (60) feet;

c. Maximum coverage—Forty (40) percent.

(8) In the RU-TH District:

a. Maximum density—Ten (10) du/acre;

b. Minimum lot size—One thousand eight hundred (1,800) square feet;

c. Minimum front setback—Ten (10) feet.

(9) In the RU-3M District:

a. Maximum density—Fifteen (15) du/acre;

b. Maximum floor area ratio—0.60;

c. Maximum height—Three (3) stories;

d. Maximum coverage—Thirty-five (35) percent.

(10) In the RU-4L District:

a. Maximum density—Twenty-five (25) du/acre;

b. Maximum floor area ratio—0.9;

c. Maximum height—Six (6) stories;

d. Maximum coverage—Thirty-five (35) percent.

(11) In the RU-4M District:

a. Maximum density—Forty (40) du/acre;

b. Maximum floor area ratio—1.0;

c. Maximum height—Nine (9) stories;

d. Maximum coverage—Thirty-five (35) percent.

(12) In the RU-4 District:

a. Maximum density—Fifty-five (55) du/acre;

b. Maximum height—One (1) additional story;

c. Maximum floor area ratio—2.2 for a

development over nine (9) stories.

(13) In the RU-4A District:

a. Maximum density:

1. Apartments—Fifty-five (55) du/acre;

2. Hotel rooms—Eighty-five (85) du/acre;

b. Maximum height—One (1) additional story;

c. Maximum floor area ratio—2.2 for a development over nine (9) stories.

(14) In the PAD District: A bonus of twenty (20) percent in the number of residential dwelling units above the maximum density set forth on the Comprehensive Development Master Plan Land Use Plan Map as permitted by the Land Use Element of the Comprehensive Development Master Plan.

(15) In all Community Urban Center zoning districts: Developments located on parcels of land that are in the Core or Center Sub-districts of Community Urban Center zoning districts and that are designated as Mixed Use Main (MM), Mixed Use Corridor (MC), or Mixed Use U.S. 1 (M1) on the respective Land Use Regulating Plan, may develop, in addition to the number of dwelling units authorized in the Land Use Regulating Plan, up to 8 dwelling units at the rate of 2 dwelling units for each severable use right.

>>(16) Municipalities that allow the use of severable use rights in accordance with this division may establish their own limitations on total development that may be permitted with the use of severable use rights in residential zoning districts, provided that no more than one (1) dwelling unit may be permitted for each severable use right.<<

(h) Commercial development of severable use rights.

>>(1)<< The developer of a parcel of land in the BU-1, BU-1A, BU-2 and BU-3 Districts may secure a development bonus of additional floor area ratio of .015 per acre for each severable use right. In no event shall a development in a BU-1 and BU-1A District exceed forty-five (45) percent lot coverage. In no event shall a development in a BU-2 and BU-3 District exceed fifty (50) percent of lot coverage.

>>(2)<< The developer of a parcel of land in the OPD district may secure a development bonus of additional floor area ratio of .010 per acre for each severable use right.

>>(3) Municipalities that allow the use of severable use

rights in accordance with this division may establish their own limitations on total development that may be permitted with the use of severable use rights in commercial zoning districts, provided that the development bonus of additional floor area ratio permitted for each severable use right does not exceed .015 per acre, and, in the municipal equivalent of an office park district, .010 per acre.<<

(i) In the event the use of severable use rights involves development above the underlying permitted height or lot coverage or floor area ratio restriction in the district the parcel proposed by development is located, each dwelling unit and every square foot of nonresidential building above the underlying height or lot coverage or floor area ratio restriction shall be derived from severable use rights.

Sec. 33B-46. Administrative appeal.

In the event that an owner or other aggrieved party alleges an error in any order, requirement, decision or determination made by an administrative official >>of Miami-Dade County<< in the interpretation of any portion of these provisions, an appeal may be filed pursuant to the provisions of Section >>33-314(C)(6)<< [[~~33-311(e)~~]] of the Code.

Sec. 33B-47. Consistency with Chapter 33 (Zoning Code) of the Code >>and Applicable Municipal Code<<.

Notwithstanding anything in Chapter 33 (Zoning Code) of the Code of Metropolitan Miami-Dade County to the contrary, the provisions of this division shall be deemed to supersede all conflicting provisions. This division is intended to ensure an equitable distribution of development rights throughout the county as a means of addressing the burdens of protecting public and private resources of the East Everglades as defined herein. >>Municipalities that allow the use of severable use rights in accordance with this division may provide for their several use rights ordinances to supersede other municipal code provisions and regulations.<<

Secs. 33B-48-33B.50. Reserved.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel

Prime Sponsor: Commissioner Daniella Levine Cava
Co-Sponsors: Commissioner Audrey M. Edmonson
Commissioner Sally A. Heyman