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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

(Second Reading 12-04-07)

Memorandum

MIAMI-DADE COUNTY

Date: October 2, 2007

Agenda Item No.7(C)

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

O#07-175

From: George M. Burgess
County Manager

Subject: Ordinance Amending Section 24-48.2 of the Code of Miami-Dade County, Florida, Relating to Permit Application Forms; Amending Section 24-48.5 of the Code of Miami-Dade County, Florida, Relating to Permit Issuance and Waiver of Bonding Requirements; Providing Written Consent for Submerged Lands Owned by Governmental Entities.

Recommendation
It is recommended that the Board approve the attached ordinance amending Section 24-48.2 of the Code of Miami-Dade County, Florida, relating to permit application forms; amending Section 24-48.5 of the Code of Miami-Dade County, Florida, relating to permit issuance and waiver of bonding requirements; providing written consent for submerged lands owned by governmental entities.

Scope
The proposed ordinance involves environmental permitting countywide.

Fiscal Impact/Funding Source
There will be no fiscal impact to Miami-Dade County as a result of this ordinance.

Track Record/Monitor
N/A

Background
Article IV of Chapter 24 of the Code of Miami-Dade County, Florida, requires that a DERM class I permit be obtained prior to performing work in, on, over, or upon tidal waters, or submerged bay bottom lands anywhere in Miami-Dade County. Work proposed in class I permit applications typically includes the construction of piers, docks, mooring piles, boat lifts, seawalls, or the dredging of submerged lands for vessel access. Section 24-48.2 of the Code requires class I permit applicants to provide evidence of ownership or a lease of the submerged land upon which the work is proposed.

Submerged lands may be owned by governmental entities or said lands may be privately-owned. Most of the submerged lands in Biscayne Bay are owned by the State of Florida and some are owned by other governmental entities, including several municipalities. The State of Florida does provide a limited number of leases for the use of sovereign submerged lands, but more often provides a Consent of Use form. In most cases municipal governments do not require municipal residents to obtain a lease for use of the municipality's submerged lands, but provide authorization through approval of the applicant's building plans.

The proposed change to Chapter 24 of the Code of Miami-Dade County will streamline the processing of class I permits by authorizing DERM to accept a written consent from a governmental entity which owns the submerged lands upon which work is proposed in a class I permit application instead of requiring the applicant to obtain a lease of the submerged land from the governmental entity.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 4, 2007

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

SUBJECT: Agenda Item No. 7(C)

Please note any items checked.

_____ "4-Day Rule" ("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

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(C)
12-04-07

ORDINANCE NO. 07-175

ORDINANCE AMENDING SECTION 24-48.2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO PERMIT APPLICATION FORMS; AMENDING SECTION 24-48.5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO PERMIT ISSUANCE AND WAIVER OF BONDING REQUIREMENTS; PROVIDING WRITTEN CONSENT FOR SUBMERGED LANDS OWNED BY GOVERNMENTAL ENTITIES; 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. Section 24-48.2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 24-48.2. Permit application forms; procedures.

There are two (2) types of application forms; short form and standard form. The general criteria for determining the type of application form required are based on the magnitude of the project, and its potential environmental impact. Unless waived by the municipality, the applicant's plans shall require municipal approval.

(I) *Short Form Permit Application:*

(A) *When permissible:* A short form permit application may be accepted by the Department of Environmental Resources Management for the following types of work:

(1) Repair or replacement of seawalls or bulkheads at the mean high water line or at their existing location.

(2) Construction or the placement of a single-family residence fixed or floating dock, davit, boat lift, mooring or fender pile, all of which are associated with a single family residence provided that none of the

[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.

foregoing protrude into the water more than twenty-five (25) percent of the width of the waterway.

* * *

(B) *Application procedure (class I, class II, class III, class IV, class V, and class VI permits):*

(1) The applicant or his agent shall submit to the Department of Environmental Resources Management an application in such form as prescribed by the Department. A class I permit application shall be verified by the upland property owner who possesses riparian rights to the area of the proposed work or the lessee of said upland property. For removal and disposal of contaminated sediments from the Miami River and its tidal tributaries conducted by the U. S. Army Corps of Engineers and the local project sponsor in conjunction with maintenance dredging of the Miami River federal navigation channel, the written consent of the upland property owner who possesses riparian rights to the area of the proposed work or the written consent of the lessee who possesses riparian rights to the area of the proposed work shall be the equivalent of the aforesaid verification of the application. In such case, the local project sponsor shall be deemed and shall be the applicant for the purposes of this Article. Written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee. Verification by the upland property owner who possesses riparian rights to the area of the proposed work or by the lessee of said upland property shall not be required for a class I permit application submitted by a federal, state, county, municipal, or other governmental entity for dredging projects to improve drainage in tidal waters of canals and rivers, provided, that the proposed work shall be performed only on submerged lands owned by the governmental entity submitting the class I permit application. A class IV permit application shall be verified by the owner of the property or the lessee of the property upon which the work is proposed. If the application for a class I or class IV permit is verified by the lessee, a statement from the owner of the property indicating that he has no objection to the work proposed shall be submitted with the application. A public hearing by the Board of County Commissioners shall be held for a short form application if a written request therefor is field with the Department of Environmental Resources Management prior to the Department's issuance of the permit. The written request for public hearing before the Board of County Commissioners shall include in the written request the specific Department of Environmental Resources Management pending permit application number. If no such written request is filed, the Department of Environmental Resources Management shall approve and issue, deny or approve and issue subject to conditions, limitations or restrictions, the work proposed under the permit application based upon the applicable evaluation factors set forth in

Section 24-48.3 of this Code. If a timely request is filed, the Board of County Commissioners shall approve, approve with conditions, limitations or restrictions, or deny a permit for the proposed work after conducting said public hearing in accordance with the procedures set forth in Section 24-48.2(II)(B)(1), (2) and (3). A short form permit application shall include but not be limited to the following:

(a) Two (2) or more complete sets of construction plans and calculations for the proposed work prepared by an engineer registered in the State of Florida. Said plans and calculations shall be subject to review and approval by the Department of Environmental Resources Management. Said plans and calculations may be prepared by an architect registered in the State of Florida for work described in Section 24-48.2(I)(A)(4), (7), (8), (10), (11), (14), (19), (21) and (27). Said plans and calculations may be prepared by a land surveyor registered in the State of Florida for the work described in Section 24-48.2(I)(A)(21) and (27). Rockplowing or other agricultural site alterations as described in Section 24-48.2(I)(A)(22) and (23) are exempt from submitting plans prepared by an architect or engineer only if said rockplowing or agricultural site alteration does not involve the construction of any roads built at elevations higher than natural surface elevations, fill pads, culverts, or structures of any type; excavation of any borrow pits, ditches or canals; or the construction of any other drainage facilities or drainage structures. Short form applications for rockplowing or other agricultural site alteration which meet the requirements of this provision may substitute sketches or plans of the proposed work. Said sketches or plans shall be in sufficient detail to identify the type of the proposed work, location of the proposed work and whether or not the proposed work complies with all applicable development criteria and management practices. Work limited exclusively to the trimming or cutting of a mangrove tree(s) is exempt from this requirement.

(b) A check in the amount of the required application fee payable to Miami-Dade County.

(c) Evidence of ownership or a lease of the upland and submerged land, or evidence of ownership or a lease of the wetland upon which work is proposed. Said evidence of ownership may include, in the discretion of the Department of Environmental Resources Management, an affidavit of ownership executed by the owner of the property. >>For proposed work on submerged lands owned by a federal, state, county, municipal, or other governmental entity, evidence of ownership or a lease of the upland and a.) the written consent of the federal, state, county, municipal, or other government entity owning the submerged lands upon which the work is proposed or, b.) lease from the federal, state, county, municipal, or

other governmental entity owning the submerged lands upon which the work is proposed, shall be required. Written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee.<< For removal and disposal of contaminated sediments from the Miami River and its tidal tributaries conducted by the U. S. Army Corps of Engineers and the local project sponsor in conjunction with maintenance dredging of the Miami River federal navigation channel, the written consent of the owner or lessee of the submerged lands and the written consent of the owner or lessee of the upland who possesses riparian rights to the area of the proposed work shall be deemed to satisfy the requirements of this paragraph. The written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee.

(d) If the proposed work is within an incorporated area, a substantiating letter shall be submitted, as part of the permit application, from the zoning department of the incorporated area. If the proposed work is within an unincorporated area, a substantiating letter from Miami-Dade County Department of Planning and Zoning shall be submitted as part of the permit application. Said substantiating letter shall state that the proposed usage of the property upon which the proposed work would occur does not violate any zoning law applicable to the area of the proposed work.

* * *

(II) *Standard Form Permit Application:*

(A) A standard form permit application shall be required for any work requiring a class I or class IV permit not specifically described under Section 24-48.2(I). A standard form permit application shall also be required for all short form permit applications for which a public hearing has been requested pursuant to Section 24-48.2(I)(B)(1). A class I permit application shall be verified by the upland property owner who possesses riparian rights to the area of the proposed work or the lessee of said upland property. For removal and disposal of contaminated sediments from the Miami River and its tidal tributaries conducted by the U. S. Army Corps of Engineers and the local project sponsor in conjunction with maintenance dredging of the Miami River federal navigation channel, the written consent of the upland property owner who possesses riparian rights to the area of the proposed work or the written consent of the lessee who possesses riparian rights to the area of the proposed work shall be the equivalent of the aforesaid verification of the application. In such case, the local project sponsor shall be deemed and shall be the applicant for the purposes of this Article. Written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee. Verification by the upland property owner who possesses riparian rights to the area of the proposed work or by the lessee

of said upland property shall not be required for a class I permit application submitted by a federal, state, county, municipal, or other governmental entity for dredging projects to improve drainage in tidal waters of canals and rivers, provided, that the proposed work shall be performed only on submerged lands owned by the governmental entity submitting the class I permit application. A class IV permit application shall be verified by the owner of the property or the lessee of the property upon which the work is proposed. If the application for a class I or IV permit is verified by the lessee, a statement from the owner of the property indicating that he has no objection to the work proposed shall be submitted with the application. All permit applications shall be submitted to the Department of Environmental Resources Management in such form as prescribed by the Department. A standard form permit application shall include, but not be limited to, the following:

(1) Evidence of ownership or a lease of the upland and submerged land, or evidence of ownership or a lease of the wetland upon which work is proposed. Said evidence of ownership may include, in the discretion of the Department of Environmental Resources Management, an affidavit of ownership executed by the owner of the property. >>For proposed work on submerged lands owned by a federal, state, county, municipal, or other governmental entity, evidence of ownership or a lease of the upland and a.) the written consent of the federal, state, county, municipal, or other government entity owning the submerged lands upon which the work is proposed or, b.) lease from the federal, state, county, municipal, or other governmental entity owning the submerged lands upon which the work is proposed, shall be required. Written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee.<< For removal and disposal of contaminated sediments from the Miami River and its tidal tributaries conducted by the U. S. Army Corps of Engineers and the local project sponsor in conjunction with maintenance dredging of the Miami River federal navigation channel, the written consent of the owner or lessee of the submerged lands and the written consent of the owner or lessee of the upland who possesses riparian rights to the area of the proposed work shall be deemed to satisfy the requirements of this paragraph. The written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee.

(2) Three (3) copies of a plan or sketch of the proposed structure or work. For class I permits this shall include the locations of the mean high water line, mean low water line, the property lines of the upland owner, and soundings made in the surrounding water areas, corrected to mean low water datum. For work which involves the trimming or cutting of a mangrove tree(s), the sketch or plan shall delineate the location and size of all existing mangrove tree(s) on the site and the nature, degree and methodology of the proposed trimming or cutting.

* * *

Section 2. Section 24-48.5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

(1) Issuance of a Department of Environmental Resources Management permit does not relieve the applicant from obtaining all required federal, State and local permits.

(2) Following approval by the Board of County Commissioners or after submitting a short form application, a construction permit may be issued to the permit applicant and a contractor holding an applicable certificate of competency, provided:

(a) Construction plans, calculations and specifications are submitted which have been prepared by an engineer or architect or land surveyor where applicable registered in the State of Florida and which comply with the requirements of this Chapter and other particular conditions, including, but not limited to, requirements for riprap, and monitoring programs.

(b) The permit fee has been paid.

(c) A performance bond and a mitigation bond, if applicable, is posted in an amount determined by the Director of the Department of Environmental Resources Management. The maximum amount of said performance bond shall be one hundred (100) percent of the estimated cost of the work or one thousand dollars ($1,000.00) whichever is less. The performance bond being to guarantee compliance with terms of the permit and to protect the interest of the public and of landowners in the vicinity of the work. The DERM may waive the performance bond if he determines that the proposed project is not expected to affect the interests of the public or landowners in the vicinity of the work and noncompliance with the terms of the permit will only affect the permit applicant. The DERM may also waive performance bonds for work performed by utility companies, for work performed by governmental agencies pursuant to Section 24-48.8 of this chapter and for work approved under a short form permit application pursuant to Section 24-48.2(I)(A)(22) and (23). A separate mitigation bond may be required by the DERM to be posted in order to insure that environmental enhancement features associated with the project and required by the permit are completed in a satisfactory manner. These include, but are not limited to, the placement of riprap, the replanting of mangroves or seagrass, the installation of sewage pumpout stations, the construction of public piers or shoreline walkways and the construction of artificial reefs. The maximum amount of said mitigation bond shall be one hundred (100) percent of the cost of the environmental enhancement features of the project. The required performance and mitigation bonds may be required to remain in force for up to six (6) months after the approved completion date of the work covered by the bond.

(d) Evidence of ownership, a lease, a consent of use or an easement for the submerged lands upon which the proposed work in tidal waters will occur under a class I permit. >>For proposed work on submerged lands owned by a federal, state, county, municipal, or other governmental entity, evidence of ownership or a lease of the upland and a.) the written consent of the federal, state, county, municipal, or other government entity owning the submerged lands upon which the work is proposed or, b.) lease from the federal, state, county, municipal, or other governmental entity owning the submerged lands upon which the work is proposed, shall be required. Written consent shall be in a form prescribed by the Director of the Department of Environmental Resources Management or the Director's designee.<<

* * *

Section 3. 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 4. 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 5. 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: **December 4, 2007**

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Peter S. Tell