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No-build policy for Biscayne Bay wetlands is rescinded

BY PATRICIA MAZZEI

Reversing a no-development policy set last year, leaders of the South Florida Water Management District said last week they would give case-by-case consideration to applications to build on coastal wetlands set aside for restoration in South Dade.

The decision might directly affect Cutler Properties, which applied three years ago to build on its 136 acres on the southeast corner of Southwest 184th Street and Old Cutler Road in Cutler Bay.

In September 2007, district officials said they would negotiate to acquire the land after prohibiting development on close to 6,400 acres of wetlands along Biscayne Bay from Southwest 152nd Street in Palmetto Bay to Biscayne National Park. When they didn't reach an agreement, Cutler Properties sued the district over how much the agency should pay for the land.

Those wetlands, once swampy and dense with vegetation, were deemed critical for the Biscayne Bay Coastal Wetlands Project -- part of the Comprehensive Everglades Restoration Project -- to restore freshwater flows to Biscayne Bay and preserve mangrove and other habitats.

But on Dec. 15, the district's governing board rescinded last year's decision, telling staff members to reconsider permit applications required for construction on some of those wetlands because the cash-strapped agency cannot afford the roughly 580 acres in the restoration area still in private hands.

"We have things getting ready to start falling off the tables because we don't have enough resources," said governing board member Michael Collins of the Keys.

The district will likely revert to requiring that developers preserve some land to mitigate for construction, said Ken Ammon, deputy executive director of the agency's Everglades Restoration Resource Area.

"We're going to find this situation more and more in the future," he said in an interview Wednesday. "We may have to, quite frankly, compromise with certain applicants for a development in order to realize a bigger restoration objective."

Board members said the policy shift was not specifically aimed at Cutler Properties, though it was the only example staff members cited at the meeting. The board signed off on its decision after a closed-door session on the developer's lawsuit.

Cutler Properties, owned by Fortune International, had proposed building close to 400 residential units on the site's westernmost 42 acres that are either not wetlands or less-pristine wetlands. The remaining 96 acres would be set aside as a wetlands preserve, probably with no public access from land. Some Palmetto Bay and Cutler Bay residents had rallied against the project, sending the district letters decrying overcrowding and damage to the environment. They celebrated the halt of development plans last year. In August, Cutler Properties took the district to court over how much the district should pay the developer to acquire the land and for delaying its permit to build.

Howard Nelson, an attorney for the developer, told the governing board its policy change might not save the

district from having to pay for the land's lost value from last year to this year.

"I have a client who has had this property with an inability to move for close to four years," Nelson said. ``To make the assumption that we're just going to reverse the policy a year later and give them a permit -- that still comes with consequences."

In a related case, a trial is scheduled to start next month on how much the district should pay Cutler Bay Venture, which is owned by developer Luis Machado, for its close to 377 acres east of Southwest 87th Avenue from 224th to 232nd streets.

A district appraisal valued the land at about \$4 million, while one for the developer estimated its value at about \$20 million, said Andrew Schuster, an attorney for Cutler Bay Venture.

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