

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

NITA LEWIS, Ph.D.,
A Miami-Dade County Resident,

CASE NO.: _____

Petitioner,

v.

MIAMI-DADE COUNTY, Florida,

Respondent.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Pursuant to Section 163.3184(5), Fla. Stat., Petitioner Nita Lewis, Ph.D. (“Petitioner”), files this Petition for Formal Administrative Hearing challenging Ordinance No. 212102 (the “Ordinance”), adopted by the Respondent Miami-Dade County, Florida (hereinafter “County”), approving a Future Land Use Map Amendment and text amendments to (the “Amendments”) to the County’s Comprehensive Development Master Plan (“CDMP”) to allow for a 379-acre warehouse logistics and distribution center and on-site truck trailer parking in a flood-prone Coastal High Hazard Area, which is currently used for agricultural purposes, is near Homestead Air Reserve Base (“HARB”), and in an area under consideration for a Comprehensive Everglades Restoration Plan project. Petitioner challenges the Amendments on the grounds that they are not in compliance under Florida Statutes Chapter 163, Part II. The County's own competent and experienced professional staff issued a comprehensive, forceful, CDMP and Florida law-based recommendation that the Board of County Commission (“BCC”) deny the Amendments on the precise grounds raised in this Petition, and others. The Ordinance adopting the Amendments was later vetoed by the County Mayor because the Ordinance is inconsistent with the CDMP and Florida law and not based on appropriate data and analysis, but the veto was overridden. The

County staff recommendation was firmly based on the Amendment’s demonstrable inconsistency with many adopted objectives and policies within the County’s CDMP and Florida law, as demonstrated herein and which will be proven at a Formal Hearing.

I. FACTUAL ALLEGATIONS

A. The Application and Adoption of the Ordinance.

1. On March 8, 2021, Aligned Real Estate Holdings, LLC, South Dade Industrial Partners, LLC, Bedrock South Dade 112 Avenue, LLC, and Bedrock South Dade 268 Street, LLC (the “Applicant”) filed an out-of-cycle application, assigned Application No. CDMP20210003 (the “Application”), to amend the text and adopted 2030 and 2040 Land Use Plan (“LUP”) map of the County’s CDMP, including a request to expand the County’s Urban Development Boundary (“UDB”) to include the project site. The Application sought to: (1) expand the County’s 2030 UDB to include the Application site; (2) redesignate the Application site on the County’s Land Use Plan map from “Agriculture” to “Special District”; (3) amend the interpretative text of the Land Use Element to create the “South Dade Logistics & Technology District”; (4) amend Policy LU-8H in the CDMP Land Use Element; (5) amend Policy CM-9A in the CDMP Coastal Management Element; and (6) add certain declarations of restrictions in the Restrictions Table in Appendix A of the CDMP Land Use Element.¹

2. The Application covered an area located south and east of the Homestead Extension of the Florida Turnpike (“HEFT”), between S.W. 107 Avenue and S.W. 122 Avenue, and north of S.W. 268 Street (a/k/a Moody Drive). The Application area is predominantly in agricultural use.

¹ As of the filing of this Petition, the County and the Applicant have not finalized CDMP text amendments, covenants and declarations adopted in connection with the Ordinance. Petitioner respectfully reserves the right to amend this Petition upon receipt and review of these final documents.

The South Florida Water Management District C-102 canal runs west-east along the Application site. A Florida Power and Light electricity transmission line corridor also runs west-east through the site to the north of the C-102 canal. The Application site is outside the UDB. The area is designated “Agriculture” on the LUP map. The “Agriculture” land use category allows for agriculture, which is the primary use of the Application site, and uses that are ancillary to and directly supportive of agriculture and farm residences. Uses ancillary to and directly supportive of agriculture are defined as those uses related to preserving, processing, packaging, or selling of agricultural produce. Under the current “Agriculture” land use designation, the Application site could be developed with residences at a maximum density of 1 unit per 5 gross acres.

3. The County’s Planning Department issued a lengthy and detailed report recommending that the BCC deny the Application and not transmit. County staff raised numerous grounds for its recommendation. Broadly speaking, County staff found, among other things, that the Application’s proposed changes to the CDMP map and text would authorize an “unwarranted development” that would be “contrary to and inconsistent with CDMP provisions for determining when to add lands to the 2030 Urban Development Boundary (UDB).”

4. On September 9, 2021, the BCC voted at first reading to transmit the Application for review, without recommendation.

5. On May 19, 2022, after the receipt of comments from reviewing agencies and others (reviewed below), the BCC, at the request of the Applicant, deferred action on the Ordinance, given the strong concerns from several state agencies and County staff.

6. Again, on June 1, 2022, September 22, 2022, and October 18, 2022, the BCC deferred action on the Application.

7. On November 1, 2022, the BCC adopted the Ordinance. Pursuant to Rule 8.01 of the County’s Rules of Procedures, Mayor Daniella Levine Cava vetoed the Ordinance on November 10, 2022. In her statement in support of the veto, the Mayor noted that the Amendment “encourages development in areas at risk of storm surge, putting more properties at risk in the future, especially concerning in light of the devastation we just witnessed following Hurricane Ian. We clearly see in northern Biscayne Bay the impact that poorly-planned historic development has had on our ecosystem – threatening our vital tourism economy – as we clean up our third fish kill in as many years. This application prioritizes short-term financial gain ... at the expense of our shared economic prosperity and our precious natural environment. That’s why the proposal drew clear, bipartisan opposition from the residents and commissioner [for the area], county planning experts, advocates, and federal, state, local, and tribal leaders, including Senator Rubio and the Florida Department of Environmental Protection, and many others.”

8. At a BCC meeting on November 15, 2022, the Mayor's Veto was overridden, although the Commissioner elected for the District in which the Amendment site is located (County District 8) supported the Veto.

9. This Petition is timely filed.

B. Parties and Jurisdiction

10. Petitioner, Nita Lewis, Ph.D., is an affected person as defined in Section 163.3184(1)(a), Fla. Stat., because she owns property and resides within the boundaries of the local government whose plan is the subject of the review.

11. Petitioner owns a home and lives at the address of 25581 SW 108 Avenue, Homestead, Florida 33032—that is, in close proximity to the project site.

12. Petitioner thus lives within the County, in close proximity of the property subject to the Amendment, and will be adversely affected by the Amendment.

13. Petitioner submitted oral and written comments, recommendations, or objections to the local government regarding the Application, including providing written comments during the period between the transmittal hearing and final adoption of the Amendment.

14. The Petitioner relies upon the protections provided by the County's CDMP and Florida law against adoption of CDMP amendments that are inconsistent with the CDMP and Florida law so as to be not in compliance under Section 163.3184, Fla. Stat.

15. Petitioner has the requisite legal standing to bring this Petition as an affected person whose interests will be adversely impacted because the Ordinance is not in compliance as alleged herein. Petitioner is entitled to have her interests protected under Florida law and the County's CDMP.

16. Petitioner has standing to pursue the issues raised herein to their final resolution before the State of Florida, Division of Administrative Hearings and in the courts given the concrete and adverse impact the project will have on her.

17. Respondent, Miami-Dade County, is a political subdivision of the State of Florida that is subject to the requirements of Chapter 163, Part II, Florida Statutes.

C. Agency Comments on the Application

18. Between transmittal and final adoption of the Amendment, reviewing agencies under Fla. Stat. § 163.3184(1)(c), and others, commented on the Application. The reviewing agencies largely aligned themselves with County staff's pervasive criticisms and objections regarding the Amendment.

19. On October 29, 2021, the Florida Department of Environmental Protection (“FDEP”) provided its written comments to the County regarding the proposed Amendments pursuant to Section 163.3184(1)(c)4, Fla. Stat. FDEP raised serious red flags regarding the Application. FDEP explained that the Application site is proximate to Biscayne National Park and the “Biscayne Bay Aquatic Preserve,” created pursuant to Section 258.397, Fla. Stat. Biscayne Bay is the largest estuary in Florida and the only large, subtropical, protected bay within the continental United States. Biscayne National Park is the largest marine park in the national park system with 95% of its 172,000 acres underwater. Biscayne Bay and shoreline mangroves are part of Biscayne National Park. The area is an “Outstanding Florida Water” under Fla. Admin. Code Rule 62-302.700(9). The longest stretch of mangrove forest remaining on Florida’s eastern seaboard occurs within Biscayne Bay. The County’s CDMP Capital Improvement Element states that “Biscayne Bay is a local natural resource of national significance.” CDMP CIE at p. IX-23.

20. FDEP’s comments stated that the approval of the Application constituted a potential challenge to achieving the goals of the Comprehensive Everglades Restoration Plan (“CERP”), specifically implementation of the Biscayne Bay Coastal Wetlands (“BBCW”) component of CERP.

21. CERP is the U.S. Army Corps of Engineers’ (the “Corps”) largest ecosystem restoration program, conducted in partnership with the South Florida Water Management District (the “District”). The BBCW project is part of CERP. *See* <https://www.saj.usace.army.mil/BBCW/>, last visited Nov. 24, 2022 (“The Biscayne Bay Coastal Wetlands (BBCW) ... is a component of the Comprehensive Everglades Restoration Plan (CERP), the U.S. Army Corps of Engineers’ largest ecosystem restoration program, conducted in partnership with the South Florida Water Management District.”). The purpose of the BBCW

project is to rehydrate coastal wetlands and reduce abrupt point-source freshwater discharges to Biscayne Bay and Biscayne National Park that are physiologically stressful to fish and benthic invertebrates in the bay near canal outlets. The BBCW project is designed to restore wetland and estuarine habitats and divert annual coastal structure discharge into freshwater and saltwater wetlands instead of direct discharges to Biscayne Bay and Biscayne National Park. This project was split into two Phases in 2006, the project components that conflict with this development are in Phase II and now part of a combined project that is currently in the modeling stage of planning. This project is called the Biscayne Bay and Southeastern Everglades Restoration project (“BBSEER”)

22. In its comments, FDEP confirmed that the Corps and District are planning the BBSEER project as part of the BBCW plan. One intent of BBSEER is to further the efforts of the BBCW project, as well as provide for resiliency within the County to sea-level rise. *See* <https://www.saj.usace.army.mil/BBSEER/FDEP>, last visited Nov. 24, 2022.² FDEP stated that the “footprint” of the Application site includes parcels currently under review for the BBSEER project. FDEP stated that the proposed UDB expansion and land use change could produce results that conflict with the Florida and Federal CERP efforts.

23. On October 22, 2021, pursuant to Section 163.3184(1)(c)3, Fla. Stat., the District submitted its own comments regarding the Application. Like FDEP, the District pointed out that the Application site is a mere two (2) miles from Biscayne National Park and that the District’s C-102 canal runs along the project site. The District noted that its primary concern was to ensure

² The Corps has stated that, “the [BBSEER] Project is formulating plans to restore parts of the south Florida ecosystem in freshwater wetlands of the Southern Glades and Model Lands, the coastal wetlands and subtidal areas, including mangrove and seagrass areas, of Biscayne Bay, Biscayne National Park, Manatee Bay, Card Sound and Barnes Sound. These areas have been affected by over-drainage and by damaging freshwater releases from canals”

that the approval of the Application did not interfere with CERP efforts, or impair floodplain management or flood protection.

24. The District noted that the Application “lacked much of the data and analysis needed to conduct an appropriate level evaluation.” Specifically, the District stated that the Application lacked data and analysis to evaluate compatibility of the project with CERP and Biscayne Bay restoration activities. Data and analysis were lacking, according to the District, to evaluate the impact of the project on floodplain management and flood protection. The District specifically found that the lack of information on water, sewer, and storm water management facilities “is inconsistent with the CDMP’s Future Land Use Element Policies LU-8D, LU-8E and Capital Improvements Element Objectives CIE-3 and CIE-5 (and implementing policies) which require specific projects, scheduling and funding to be identified.”

25. Regarding CERP, BBCW, and the BBSEER project, the District, like FDEP, stated that the Amendment area is within the Study Area for BBSEER and that BBSEER projects are still in early stages of development. The District explained that the project site “sits in a unique landscape position that would readily allow for storing, retaining, or detaining flows from the C-102 Canal Basin and potentially additional restoration flows through the C-102 from other Basins, in an effort to more evenly disperse flows throughout the year to Biscayne Bay. The ability to store or detain wet season canal flows for delivery during drier times is a key component to meeting BBSEER objectives. Management measures currently proposed at this location include a flow equalization basin and/or a water preserve area. ... BBSEER seeks to support the inland transition of coastal habitats that will likely be caused by sea level rise. Filling and converting the property from agriculture to development would reduce area available for transition of uplands to coastal wetlands, which is already very limited because of the density of development in Miami-Dade

County. Coastal wetlands are important storm buffers for the human landscape and are important for support of fish and wildlife in Biscayne Bay. Based on the [Corps'] high sea level rise scenario, in 50 years this property at its current elevation could support coastal wetlands along the future shoreline.”

26. As explained by FDEP and the District in their comments, the Corps has identified several BBSEER alternative plans featuring project elements on or near the project site designed to increase the quantity, quality, and distribution of freshwater flows to southern Biscayne Bay. In their comments, FDEP and the District specifically iterated concerns that advancing the Amendment *before* the BBSEER plan is established could jeopardize significant restoration benefits and hinder a comprehensive accounting of those benefits during alternative plan evaluation.

27. Like FDEP and the District, the U.S. Department of Interior (“DOI”) submitted comments, in more than one letter, raising objections regarding the Application’s compatibility with CERP, and BBSEER in particular. DOI noted that BBSEER development plans include utilizing areas within the C-102 canal basin, which includes the project site, to move water from the C-102 canal into adjacent coastal wetlands. DOI reaffirmed the concerns expressed by the District and FDEP regarding the approval of the Amendment before BBSEER project planning is completed. DOI reiterated these concerns in writing to the County on October 14, 2022, requesting that the County refrain from adopting the Ordinance approving the Application until the BBSEER selection plans are adopted in order to achieve CERP goals.

28. The concerns of FDEP, the District, and DOI were shared by the South Florida Regional Planning Council (“SFRPC”) in its comments provided pursuant to Section 163.3184(1)(c)2, Fla. Stat., on October 25, 2021. The SFRPC stated that the Application site is

within the BBSEER study area, and that the BBSEER project is currently in the determination of preferred alternatives phase. The SFRPC noted that the C-102 canal, which is within the project area, figures prominently in the analysis and alternatives for BBSEER.

29. Separately, the SFRPC additionally stated that the proposed development is in the Coastal High Hazard Area (“CHHA”), as reflected in the County’s CDMP Land Use Element, which will have implications to stormwater management and runoff, and water quality entering Biscayne Bay. The County’s CDMP and Florida law impose restrictions on development in CHHAs.

30. The CHHA designation is a function of Florida law, specifically, Section 163.3178(2)(h), Fla. Stat., which provides: “The coastal high-hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model.” The County cannot redefine a CHHA area as non-CHHA; filling a project site (as the Applicant proposes) does not render the site non-CHHA.

31. The Florida Department of Economic Opportunity (“DEO”) provided its review comments regarding the Application pursuant to Section 163.3184(1)(c)1, Fla. Stat., on October 21, 2021. DEO also flagged the proposed Amendment’s internal inconsistency with the County’s CDMP as concerns development in the County’s flood prone CHHA. DEO stated: “As currently proposed, the map amendment converts Agriculturally designated properties located mainly within the Coastal High Hazard Area (CHHA) to the Special District designation. Supporting text amendments will also allow urban type development within the CHHA. The allowance of this type of development should be considered as to whether it conflicts with Policy CM-9A, and Sections 163.3177(6)(g)6., and 163.3178(1), Florida Statutes. The County’s [CDMP] identifies the CHHA

as being among the areas least suitable for urban development (Land Use Element page 1-88 and 1-89) and language within CDMP Policy CM-9A.i) and ii) specifically discourages development in the CHHA and directs new development to high ground. However, the proposed amendment would allow ... non-residential development ... predominately located within the CHHA.” DEO concluded this section of its comments by urging the County “to give further consideration on whether this amendment is internally inconsistent with the CDMP Policy CM-9A pursuant to Section 163.3177(2), Florida Statute.” As it turned out, County staff conducted such “further consideration” and found the proposed Amendment internally inconsistent under Section 163.3177(2), Fla. Stat.

32. The Florida Department of Agricultural and Consumer Services (“FDACS”) provided its review comments pursuant to Section 163.3184(1)(c)9, Fla. Stat., on October 21, 2021. FDACS objected to the Amendment on numerous grounds. FDACS found that the Amendment “would adversely impact agricultural lands – an irreplaceable resource of statewide importance as noted in 163.3162(1), Florida Statutes, – and would therefore not be in compliance with the *Community Planning Act* in which agriculture is “to be recognized and protected” under 163.3161(11), Florida Statutes.” FDACS cited to and embraced the County’s Agricultural Practices Advisory Board’s unanimous finding, adopted at its September 2, 2021 meeting, that the Amendment should be denied due to potential adverse impacts to agricultural interests, particularly given the finding of sufficient industrial land within the UDB for several decades to meet such needs beyond the CDMP’s planning horizon. FDACS concluded its review stating: “Following [FDACS] review pursuant to Chapter 163, Florida Statutes, [FDACS] recommends that the proposed comprehensive plan amendments be denied on the basis of potential adverse impacts to agricultural land, an ‘irreplaceable resource of statewide importance’ that is predominantly

‘farmland of unique importance,’ as well as agricultural water management, both of which are central to Miami-Dade County’s \$2.7 billion agriculture industry.” The Farm Bureau also voiced serious concerns about the Amendment’s adverse impact on the County’s agriculture industry.

33. Miami-Dade County’s Office of Resiliency (“OOR”) provided its comments on the project on March 24, 2022. The OOR found that proposed Amendment, because it authorized significant development in a CHHA, would be inconsistent with Section 163.3178(1), Fla. Stat., which provides: “The Legislature recognizes there is significant interest in the resources of the coastal zone of the state. Further, the Legislature recognizes that, in the event of a natural disaster, the state may provide financial assistance to local governments for the reconstruction of roads, sewer systems, and other public facilities. Therefore, it is the intent of the Legislature that local government comprehensive plans restrict development activities where such activities would damage or destroy coastal resources, and that such plans protect human life and ***limit public expenditures in areas that are subject to destruction by natural disaster.***” (emphasis added.) The OOR stated that the County’s Coastal Management Element Policy CM-9A restricted “development activities in the [CHHA] shall be limited to those land uses that have acceptable risks to life and property.” The OOR noted that the proposed area is “within the [CCHA], which means that it is vulnerable to flooding in a Category 1 storm. In a Category 5 storm with present day sea levels (or a weaker storm with higher sea levels), this particular area could see storm surge flood depths in excess of 10 feet.” The OOR explained that even though residential development was not contemplated by the Application “even when the risks to the buildings themselves have been reduced through site or building design there are still risks to the supporting infrastructure such as roads, sewer infrastructure, and other public facilities. The state law indicates that the legislature’s intent was to ‘limit public expenditures in areas that are subject to destruction by

natural disaster.” The OOR also (correctly) criticized the Applicant’s “Conceptual Stormwater Management Master Plan” as inadequate and inconsistent with Florida law. Citing concerns over sea level rise, storm surge damage, flooding, the adverse impact on BBSEER alternatives, water quality issues, encouraging development outside the urban core and away from transit corridors, the OOR recommended denial. The OOR’s prescient objections to development in flood-prone areas presaged the devastation caused by Hurricane Ian’s Florida landfall on September 28, 2022.

34. The County’s Division of Environmental Resources Management (“DERM”) reviewed the Application and in its report, dated September 8, 2022, DERM likewise stated that the Application site is within an area that is currently being evaluated for potential restoration under the CERP’s BBSEER planning project underway by the Corps and the District. DERM explained the criticality of the area to BBSEER implementation: “CERP restoration within Miami-Dade County going forward will largely be centered on the lands remaining outside of the UDB since there is little opportunity for Everglades restoration within the UDB. Expansion of the UDB in this CERP study area prior to the BBSEER project being able to determine what land and features are needed for CERP associated with the C-102 canal *would be premature and could lead to a constrained BBSEER restoration project with significantly reduced benefits for the wetlands in the C-102 and adjacent canal basins and for the nearby areas of Biscayne Bay.*” (emphasis added.) DERM emphasized the Applicant’s failure to provide data and analysis to show the Amendment’s consistency with CERP and the Amendment’s fundamental inconsistency with the CDMP: “The Applicant has not addressed how the application is consistent with the CERP study area and the BBSEER project and how the proposed development would further LU-3. Policy LU-3 states: ‘Miami-Dade County continues to support [CERP], and related regional and local habitat restoration and preservation initiatives through its development review processes and

long range land planning initiatives.’ Miami-Dade County has committed significant resources to CERP and CERP restoration projects including BBSEER.”

35. Monroe County, City of South Miami, the Village of Islamorada, the Village of Palmetto Bay, the Town of Cutler Bay and others adopted resolutions opposing the Application and urging the BCC to accept County staff recommendations to deny the Application. The opposing resolutions largely echoed the concerns raised by the reviewing agencies.

D. Subsequent Alterations to the Application

36. Between the Amendment’s transmittal on September 9, 2021, and final approval on November 1, 2022, and through the numerous deferrals, the Application underwent revisions, including to reduce the project footprint and offer additional covenants from the Applicant. None of these revisions allayed the objections of the reviewing agencies and other commenters. For its part, the County’s Planning Department issued a final report advising that the Amendment remained inconsistent with the CDMP and Florida law notwithstanding the various alterations, and lacked data and analysis to support approval.

37. County staff scrupulously reviewed comments to the Application, the Applicant’s revisions to the proposed Amendment and proffered covenants, and reaffirmed its conclusion that the Application should be denied. County staff noted that “no new information has been provided to address” the Application’s “fundamental inconsistency” with the County’s CDMP. County staff found that “[e]ven as revised, the application does not meet the CDMP’s threshold requirement to demonstrate a need to expand the UDB pursuant to the CDMP’s long accepted needs analysis methodology, as set forth in CDMP Land Use Element Policies LU-8F and LU-8G. Consideration of the extent to which an application promotes other CDMP policies is secondary to that needs analysis. Staff’s analysis demonstrates that the application is, at best, premature.”

38. County staff found the Application inconsistent with the CDMP and lacking appropriate data and analysis to support the Amendment. Chief among the data and analysis failures and inconsistencies is the Applicant's failure to demonstrate need for the Amendment, as required by CDMP.

39. With respect to the issue of "need," the County's CDMP clearly expresses that the threshold consideration for moving the UDB is the demonstration of need based on the standards set forth in CDMP Policy LU-8F. Specifically, CDMP Land Use Element Policy LU-8G requires that, before considering expansion of the UDB, a need for additional developable land must first be demonstrated in accordance with Policy LU-8F. Consideration of the extent to which an application promotes other CDMP policies is secondary to the needs analysis.

40. As defined in the County's CDMP, need is essentially a mathematical expression that calls for the quantification and maintenance of a land supply inventory for the 10-year planning horizon. CDMP Land Use Element Policy LU-8F requires the UDB to contain adequate developable land ("land supply") having the capacity to accommodate the County's projected population and economic growth. Adequacy of non-residential land supply is to be determined by countywide supply as well as by subareas of the County appropriate to the type of use, which, for industrial uses, means planning tiers, half-tiers, or combinations thereof.

41. Based on a detailed parcel by parcel analysis, the County Planning Division projected that the entire South Planning Analysis Tier (the "South Tier" is generally the area south of SW 184 Street), where the property site is located, would currently deplete its supply of industrial zoned land sometime later than 2040. Because the CDMP planning horizon contemplated for the UDB is currently year 2030, there is no need to add land within the UDB for

industrial uses at this time, according to the County's analysis. County staff concluded that the Application does not satisfy the threshold demonstration of need.

42. To be sure, the Applicant, using its own (and flawed) methodology, attempted to show need existed. County staff evaluated the Applicant's needs analysis and proved the analysis provided contained fundamental math and logic errors. Utilizing, without embracing, the Applicant's methodology, but getting the math right, County staff found need still lacking. County staff stated: "[I]f staff were to use the applicants' methodology with the mistakes corrected . . . , the result would be 10.2 to 15.5 years of capacity countywide. While this is a much shorter depletion period than under the County's methodology, ***this would still demonstrate that even using the applicants' preferred methodology, there is adequate industrial capacity inside the UDB at this time – therefore, no need for this amendment to the UDB.***" (emphasis added.)

43. County staff concluded the Application is inconsistent with CDMP policies regarding coastal management and development in CHHA. As noted, due to the demonstrable vulnerabilities to private and public property associated with coastal storm surge, the CDMP identifies the CHHA as being among the areas least suitable for urban development. *See* CDMP Land Use Element p.I-88. Section 163.3178(1), Fla. Stat., expresses the intent of the Florida Legislature that local government comprehensive plans protect human life and limit public expenditures in areas that are subject to destruction by natural disaster. The Application proposes industrial development in an area predominantly in the CHHA that is now outside of the Urban Development Boundary in agricultural use and which is subject to destruction by natural disaster. Staff found that bringing the property inside the UDB and changing the use from agriculture to an urban use would require substantial infrastructure investments and that such infrastructure investment would be vulnerable to storm surge requiring public expenditure in derogation of the

CDMP and Florida law. Staff concluded that bringing this site within the UDB for development as industrial land is contrary to Policies CM-9A, CM-9B, CM-9E, CM-9F, and CM-10, and Capital Improvements Element Policy CIE-2A, all of which express County goals to direct infrastructure investments *away* from CHHAs. Staff noted that the County would be obliged to maintain in perpetuity public infrastructure in the project area. While the applicant proposed to elevate its entire property to address CHHA restrictions, this would likely require elevating public infrastructure all of which could impact neighboring properties that also rely on the same regional drainage system. Staff explained that surrounding properties (which would include Petitioner's) could face flooding risks from the Applicants' elevation, which would exacerbate the flooding risks posed by sea level rise over the lifetime of any proposed development. Staff concluded that the Applicant failed to provide adequate data and analysis addressing impacts to neighboring properties, particularly as to drainage and stormwater management. As noted above, the Applicant prepared a Conceptual Stormwater Management Plan, however, the Plan is inadequate, inconsistent with State law and inconsistent with LU-8E(v).

44. According to Fla. Admin. Code Rule 92.0256, Hurricane Vulnerability Zones are defined as areas delineated in the regional or local evacuation plan as requiring evacuation in the event of a 100-year or category three hurricane event. In Miami-Dade County, the Hurricane Vulnerability Zones are considered Hurricane Evacuation Zones A and B. The Application covers an area in Zone B and is thus in a Hurricane Evacuation Zone. *See* CDMP Coastal Management Element at p. VII-3.

45. County Staff also found that approval of the Application would be inconsistent with CDMP policies and provisions protecting agricultural lands in Miami-Dade County. Applicable agriculture policies include the Ultimate Development Area text of the Land Use Element (CDMP

p. I-88), which provides that “[w]hen the need for additional urban expansion is demonstrated, such expansion should be carefully managed to minimize the loss of agricultural land and to maximize the economic life of that valuable industry.” In addition, CDMP Policies LU-1P and LU-1R envision allowing uses in the South Dade agricultural area that are compatible with agricultural activities and associated rural residential uses. Those policies provide that the County “shall” take steps to preserve the amount of land necessary to maintain an economically viable agricultural industry. CDMP policy CON-6D states that areas in the County having soils with good potential for agricultural use without additional drainage of wetlands “shall” be protected from urban encroachment. CON-6E states that the County “shall” continue to pursue programs and mechanisms to support the local agriculture industry, and the preservation of land suitable for agriculture. County staff stated that “the premature and unwarranted replacement of ... agricultural land, the majority of which is ‘farmland of unique importance,’ with urban uses that have not been shown to be needed at this location at this time directly contravenes the above-mentioned CDMP policies.”

46. County staff also found that the Application fails to make commitments to preserve agricultural lands in other locations, as required by Policy LU-8H. Staff concluded that because the application lacked information as to future infrastructure plans, a complete analysis cannot be conducted. Due to the lack of information regarding future infrastructure impacts on the viability of the agriculture in the area and the loss of farmland of unique importance, staff concluded “the application is not consistent with CDMP policies addressing preservation of agriculture.”

47. County staff also concluded that the Application would encourage the proliferation of urban sprawl in derogation of Section 163.3177(6)(a)(9), Florida Statutes which requires land use elements and amendments thereto to discourage urban sprawl. The statute provides eight

indicators that a plan amendment discourages urban sprawl and thirteen indicators that it does not discourage urban sprawl. The statute further provides for a plan amendment to be determined to discourage urban sprawl if it incorporates a development pattern or urban form that achieves four or more indicators for the discouragement of urban sprawl. County staff found that the application has not demonstrated compliance with Section 163.3177(6)(a)(9), Fla. Stat., because the Applicant had not demonstrated that there is a need for the proposed development. The Application has also not demonstrated the appropriate coordination of land use with transportation and infrastructure planning to ensure adequate transportation facilities and other infrastructure would be provided to the proposed development. Staff's review of the Application found that it implicates six indicators (and partially meets an additional two indicators) that it encourages urban sprawl while only partially achieving two of the indicators that it discourages urban sprawl. The factors that encourage urban sprawl include that the Application: fails to adequately protect and conserve natural resources such as farmlands and soils; fails to adequately protect adjacent agricultural areas and activities; fails to maximize use of existing public facilities and services; allows for land use patterns or timing that disproportionately increase the costs in time, money, and energy of providing and maintaining facilities and services; discourages infill development or redevelopment of existing neighborhoods or communities; results in poor accessibility among linked or related land uses; and, results in the loss of significant amounts of open space. Thus, County staff found that if the proposed amendment were approved, it would encourage the proliferation of urban sprawl in contravention of the statutory requirement in Section 163.3177(6)(a)(9), Fla. Stat., to discourage urban sprawl.

48. As to consistency with CERP, and specifically the BBCW and BBSEER project, the County staff again found that the Amendments would be inconsistent with the CDMP: "The

application has not addressed how it is consistent with the CERP study area and the BBSEER project and how the proposed development would further LU-3. Policy LU-3 states: ‘Miami-Dade County continues to support the Comprehensive Everglades Restoration Plan (CERP), and related regional and local habitat restoration and preservation initiatives through its development review processes and long-range land planning initiatives.’ Miami-Dade County has committed significant resources to CERP and CERP restoration projects including BBSEER. DERM, the County’s Office of Resilience, the South Florida Water Management District, and the South Florida Regional Planning Council have all raised concerns regarding the project and potential BBSEER impacts, in addition to the US Department of the Interior.”

49. Approval of the application will foreclose options for successfully accomplishing objectives of the BBSEER project, as County staff, FDEP, the District, and DOI, among others, all advised. As noted above, DOI’s Office of Everglades Restoration Initiatives advised the County in writing of its concerns with this proposed application and impacts to BBSEER efforts, as did FDEP and the District. These inconsistencies were ignored by the BCC.

50. The County’s staff thus irrefutably demonstrated that approval of the Amendment would be in derogation of and inconsistent with existing policies of the CDMP and Florida law, and that no appropriate data and analysis exist to support approval of the Amendment—conclusions that the Mayor echoed in her veto.

II. THE AMENDMENT IS NOT IN COMPLIANCE

51. Section 163.3177(2), Fla. Stat. provides that “[c]oordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan *shall be consistent*. Where data is relevant to several elements, *consistent data shall be used*, including population estimates and projections unless alternative

data can be justified for a plan amendment through new supporting data and analysis.” Coordination of the several elements of the comprehensive plan is required to be a major objective of the planning process per Section 163.3177(2), Fla. Stat. As demonstrated below, the Ordinance amends the County’s CDMP in a manner that creates internal inconsistencies such that the plan does not cohere and thus the Amendment is not in compliance.

52. Section 163.3177(1)(f), Florida Statutes provides that all plan amendments *shall* be based upon relevant and appropriate data and an analysis by the local government. The Amendment, as shown below, is not supported by appropriate data and analysis, or appropriate reaction to the data and analysis that exist.

A. Inconsistencies with CDMP Provisions and State Law Regarding Development in the CHHA, and Failure to Provide Data and Analysis Relating to Development in CHHA.

53. Florida Statutes § 163.3178(1) provides that “the Legislature recognizes that, in the event of a natural disaster, the state may provide financial assistance to local governments for the reconstruction of roads, sewer systems, and other public facilities. Therefore, it is the intent of the Legislature that local government comprehensive plans restrict development activities where such activities would damage or destroy coastal resources, and that such plans protect human life and limit public expenditures in areas that are subject to destruction by natural disaster.”

54. Sections § 163.3177(6)(g)3, 5 & 6, Fla. Stat., state that Coastal Management elements in a CDMP “shall set forth the principles, guidelines, standards, and strategies that shall guide the local government’s decisions and program implementation with respect to the following objectives: ... 3. Protect the orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources. ... 5. Use ecological planning principles and assumptions in the determination of the suitability of permitted

development [and] 6. *Limit public expenditures that subsidize development in coastal high-hazard areas.*” (emphasis added).

55. LU-3D states, in part: “Miami-Dade County shall not sponsor any growth-subsidizing programs which promote future population growth and residential development ... within the coastal high hazard areas (CHHA).”

56. The County’s Coastal Management Element Objective CM-9 provides that “Miami-Dade County shall continue to orient its planning, regulatory, and service programs to direct future population concentrations away from the [CHHA] and FEMA “V” Zone. Infrastructure shall be available to serve the existing development and redevelopment proposed in the Land Use Element and population in the CHHA, but shall not be built, expanded, or oversized to promote increased population in the coastal high-risk area.”

57. Coastal Management Element CM-9A states that “Development and redevelopment activities in the [CHHA], and the Hurricane Vulnerability Zone 1 shall be limited to those land uses that have acceptable risks to life and property. The basis for determining permitted activities shall include federal, State, and local laws, the pre-disaster study and analysis of the acceptability of various land uses reported in the County's Comprehensive Emergency Management Plan required by Policy CM-10A, when approved, and the following guidelines: i) Discourage development on the CHHA, including the barrier islands and shoreline areas susceptible to destructive storm surge; ii) Direct new development and redevelopment to high ground along the Atlantic Coastal Ridge and inland environmentally suitable lands; iii) Maintain, or reduce where possible, densities and intensities of new urban development and redevelopment within the [CHHA]; to that of existing development and zoning; iv) Prohibit construction of new mobile home parks and critical facilities in the [CHHA]; v) Prohibit Land Use Plan map

amendments or rezoning actions that would increase allowable residential density in the FEMA "V" Zone, the CHHA or on land seaward of the Coastal Construction Control Line (CCCL) established pursuant to Chapter 161, F.S. unless it can be demonstrated that measures will be undertaken to maintain the existing evacuation period in accordance with Policy CM-8F; and, vi) Continue to closely monitor new development and redevelopment in areas subject to coastal flooding to implement requirements of the federal flood insurance program.

58. Coastal Management Element CM-9B provides that “Land use amendments to the Comprehensive Development Master Plan shall not be approved in Coastal High Hazard Areas if they would decrease Levels of Service on roadways below the LOS standards established in the Transportation Element.”

59. Coastal Management Element CM-9C states: “Miami-Dade County shall consider undeveloped land in areas most vulnerable to destructive storm surges for public or private recreational uses and open space, including restoration of coastal natural areas.”

60. Coastal Management Element CM-9F states: “Public expenditures that subsidize new or expanded infrastructure that would encourage additional population growth in the [CHHA] shall be prohibited. New public facilities shall not be built in the [CHHA], unless they are necessary to protect the health and safety of the existing population or for the following exceptions: public parks, beach or shoreline access; resource protection or restoration; marinas or Ports; or roadways, causeways and bridges necessary to maintain or improve hurricane evacuation times. Potable water and sanitary sewer facilities shall not be oversized to subsidize additional development in the [CHHA].”

61. Capital Improvement Element Objective CIE-2 provides that “Public infrastructure expenditures should be limited within the [CHHA].”

62. CDMP CIE-2A states “Public funds will not be used to subsidize increased overall density or intensity of urban development in [CHHA].”

63. These policies and State laws are designed to limit development in CCHAs, direct new development to high ground and inland, and maintain or reduce where possible, densities and intensities of new urban development within the CHHA. The Amendment is inconsistent with State law and County policies aimed at reducing the risk to property in areas vulnerable to destructive storm surge. Areas within the CHHA and Hurricane Vulnerability Zone (again, the project site is in Zone B) are going to be impacted by hurricanes whose impacts are predicted to be of increased severity over time as sea levels continue to rise. The ultimate consequence is that the risks to property, including State and County infrastructure in the CHHA and Hurricane Vulnerability Zone, will be increasingly unacceptable as additional public expenditures are needed to protect, maintain, or access an area subject to destruction from natural disasters. The County’s long-term strategy to address this, as reflected in the CDMP and required by Section 163.3187(1), Fla. Stat., is to avoid new residential or non-residential development in the areas most exposed to damaging storm surge such as the CCHA and Hurricane Evacuation Zones. One need look no further than the devastation caused by Hurricane Ian to appreciate the criticality of adhering to these policies.

64. While the Applicant suggested these policies could be avoided by elevating finished floors in the area above hurricane storm surge event, there are several flaws to this proposed change. First, this is not consistent with other existing requirements that dictate building elevations. Second, this proposed amendment addresses only the physical risks to the buildings and does not address the supporting infrastructure and emergency management services—public expenditures and responsibilities these policies and Section 163.3187(1), Fla. Stat., are designed

to limit. In any event, as the OOR report states, the CHHA is a designation that is determined by the State of Florida. Property owners cannot elevate their property out of the CHHA designation.

65. State and County policies have been established to restrict development in the CHHA. These policies and Florida laws exist precisely to protect human life and limit property damage. Even when the risks to property have been mitigated through site or building design there are still risks to the supporting public infrastructure such as roads, sewer infrastructure, and other public facilities—risks amply demonstrated by Hurricane Ian which devastated roads, bridges and other public infrastructure which will cost untold millions of public funds to repair. *See* J. Hume, Experts Say Hurricane Ian Flood Waters Damaged Florida Roads, <https://www.mynews13.com/fl/orlando/news/2022/10/13/ian-flood-waters-impact-roads>, *last visited*, Nov. 30, 2022. State law indicates that the Legislature’s intent was to “limit public expenditures in areas that are subject to destruction by natural disaster.” Fla. Stat. § 163.3184(1). Even given the Applicant’s proposal to elevate certain assets, it is still likely that the costs of emergency repairs and required maintenance for additional infrastructure in the CHHA would likely increase over time given that flooding risks are expected to grow over time. Intensification in high-risk areas could also impact the provision of public services such as emergency services before, during, and after a storm. Expansion of development in high-risk areas would likely require an increase in the demand for police, fire, and solid waste services after a hurricane. This demand for emergency services could increase over the development project lifetime as flood risks increase with rising sea levels. It is precisely because of the Amendment’s inconsistencies with these CDMP and State law provisions that County staff, including the County’s OOR, wisely recommended denial.

B. Inconsistencies with CDMP Policies and State Law Protecting Agricultural Interests and Failure to Provide Data and Analysis Regarding Impact on Agriculture.

66. The County's CDMP Land Use Element includes in the goal statement the need to "preserve Miami-Dade County's unique agricultural lands." Encouraging agriculture as a viable economic use of land is woven throughout several CDMP policies. CDMP Policy LU-1R includes language directing the County to take steps to reserve the amount of land necessary to maintain an economically viable agricultural industry. Depletion of agricultural land below a certain threshold may lead to a loss of the economies of scale enjoyed by the industry and an associated reduction in agricultural support services. (See Final Urban Expansion Area Report: Mayor's Memo, p.3, May 11, 2021). CDMP Policy LU-8H(q) requires a UDB application provide for the preservation of agricultural land commensurate with the impacts of the application on agriculturally designated land. The Application will remove approximately 400 acres of agricultural land and associated farm employment jobs. Yet the Application fails to provide adequate data and analysis on preservation of agricultural land commensurate with the impacts of the Application, and the adoption of the Ordinance failed to react appropriately to the available data and analysis.

67. Analysis by the County's Agricultural Manager Charles LePradd highlight the value and importance of the farmland in the project site, and the impact its development would have on the County's agricultural capacity: "The subject parcel is currently designated Agriculture and is primarily utilized for active agriculture production. The two main soil types that make up 90% of the area, as classified by the United States Department of Agriculture, are Perrine Marl and Biscayne Marl. Both soil types are defined as "farmland of unique importance" by the USDA." The County's agricultural analysis notes that the site is "farmland of unique importance" and constitutes the highest soil classification found in the County. "[C]hanging the land use designations for this area will accelerate the conversion of the land to non-agricultural uses and

deplete the availability of farmland of unique importance.” The impacts of this project on agriculture would potentially extend beyond the project footprint. The County’s agricultural expert’s analysis goes on to state: “This area has a significant amount of public and private drainage systems, that if disrupted, would eliminate the ability to farm within the area of application as well as surrounding farmland.” The County staff report notes that the Applicant has not conducted sufficient analysis of potential impacts of the project on drainage. The project’s impacts to agriculture could easily extend beyond the project footprint to surrounding farms and agricultural lands. The Ordinance was adopted in derogation of the CDMP and Florida law provisions designed to preserve unique farmland and without adequate data and analysis regarding the impacts on agricultural operations.

C. **Inconsistencies with CERP and Failure to Provide Data and Analysis Regarding CERP Impacts.**

68. CDMP Land Use Element LU-3J states: “Miami-Dade County continues to support the Comprehensive Everglades Restoration Plan (CERP), and related regional and local habitat restoration and preservation initiatives through its development review processes and long range land planning initiatives.” Conservation Aquifer Recharge and Drainage Element CON-7J states: “Applications that are found to be inconsistent with CERP objectives, projects or features shall be denied.”

69. The Ordinance is inconsistent with these elements because it could foreclose options for successfully accomplishing objectives of the BBSEER project. As noted above, on October 14, 2022, the Office of Everglades Restoration Initiatives with the U.S. DOI sent a letter confirming concerns with this Application and its impact on BBSEER efforts. Likewise, DERM’s review, dated September 8, 2022, found that the Application is within an area that is currently being evaluated for potential restoration under CERP’s BBSEER planning project—a conclusion

recently reaffirmed by the Corps in its BBSEER planning. One of the main purposes of the BBSEER planning project is to improve quantity, timing, and distribution of water to restore freshwater and coastal wetlands as well as nearshore subtidal areas, including mangrove and seagrass area discharges. These proposed improvements ultimately will help restore Biscayne Bay.

70. The CDMP Application is adjacent to the C-102 canal and is within the C-102 BBSEER study area. Allowing these properties to be developed removes them from the C-102 BBSEER study area as a practical matter because CERP would not be able to utilize these currently unfilled areas within the C-102 basin for restoration purposes. Allowing these properties to be developed also removes the possibility of utilizing this portion of the C-102 basin for Biscayne Bay restoration under any other restoration. For this reason, adoption of the Ordinance is inconsistent with the CDMP and is not based on adequate data and analysis, nor is the Ordinance an appropriate reaction to the data and analysis that is available at present.

D. Inconsistencies with State Law to Discourage Sprawl.

71. The Ordinance encourages the proliferation of urban sprawl in derogation of Section 163.3177(6)(a)(9), Fla. Stat. As noted above, the statute provides eight indicators that a plan amendment discourages urban sprawl and thirteen indicators that it does not discourage urban sprawl. It further provides for a plan amendment to be determined to discourage urban sprawl if it incorporates a development pattern or urban form that achieves four or more indicators for the discouragement of urban sprawl. The Ordinance encourages urban sprawl because it fails to adequately protect and conserve natural resources such as farmlands and soils; fails to adequately protect adjacent agricultural areas and activities; fails to maximize use of existing public facilities and services; allows for land use patterns or timing that disproportionately increase the costs in time, money, and energy of providing and maintaining facilities and services; discourages infill

development or redevelopment of existing neighborhoods or communities; results in poor accessibility among linked or related land uses; and results in the loss of significant amounts of open space. Therefore, the Ordinance contravenes the statutory requirement in section 163.3177(6)(a)(9) of the Florida Statutes to discourage urban sprawl.

E. The Application Is Inconsistent with Policies and Provisions To Preserve Water Quality and Other Public Assets.

72. CDMP CIE-3 states that “CDMP land use decisions will be made in the context of available fiscal resources such that scheduling and providing capital facilities for new development will not degrade adopted service levels.” CIE-5 states that “Development approvals will strictly adhere to all adopted growth management and land development regulations and will include specific reference to the means by which public facilities and infrastructure will be provided.” CDMP Land Use Element LU-8D provides that “[t]he maintenance of internal consistency among all Elements of the CDMP shall be a prime consideration in evaluating all requests for amendment to any Element of the Plan. Among other considerations, the LUP map shall not be amended to provide for additional urban expansion unless traffic circulation, mass transit, water, sewer, solid waste, drainage and park and recreation facilities necessary to serve the area are included in the plan and the associated funding programs are demonstrated to be viable.” LU-8E(v) provides: “Applications requesting amendments to the CDMP Land Use Plan map shall be evaluated for consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the proposal, if approved, would ... (v) [e]nhance or degrade systems important to the County as a whole including regional drainage, emergency management, transit service, roadways, facilities of countywide significance, and water quality.”

73. The Application is inconsistent with LU-8D, LU-8E(v) and CIE-3 and CIE-5 for numerous reasons. First, the Application does not “enhance” water quality, it will degrade water

quality in derogation of LU-8E(v). While the Applicant submitted a “conceptual” stormwater management plan, the conceptual plan is fundamentally flawed and not consistent with accepted stormwater management practices. The proposed drainage plan for the Application site includes a perimeter berm at 8.5 NGVD to retain onsite runoff from a 100 year, 3-day storm event, assumed to be about 16 inches. The plan includes exfiltration trenches and dry retention areas, primarily designed for water quality treatment according to the County requirements. The peak stage from the 100 year, 3-day storm has been estimated by the Applicant to be 8.5 ft NGVD which was presumably used for establishing the perimeter berm elevation. The plan calls for retaining or improving some of the existing ditches to provide drainage during the development of Phase I. The C-102 canal and its levees (estimated to be about 4 feet above the natural ground on either side) will remain as it exists today. It is not clear how the proposed perimeter berm, the C-102 canal and its levees on either side will be configured for the project.

74. The Amendment also fails to demonstrate adequate plans for infrastructure that would be needed to support the proposed development. The Application lacks adequate information about the needed infrastructure, specifically as it relates to traffic circulation, mass transit, drainage, and parks and recreation. In some instances, the Application contains no information or discussion about the relevant infrastructure. In others, the Applicants represent that the required information will be provided at some time in the future.

75. The predominately agricultural character of the area presents inherent and unique difficulties for road expansion. The comment memorandum submitted by the County’s Agricultural Manager Charles LePradd notes that, “[t]he subject area has a limited network of public roadways. Any roadway improvements should be designed to allow access and use of large farm equipment. These roads will also need to preserve the drainage system in the area in order to

avoid impacting surrounding farms.” The Agricultural Manager’s report notes that “a significant portion of the drainage systems exists under existing roadways. The efficiency of this drainage network must be maintained and not disrupted, especially during the rain/hurricane season.” Legal precedent establishes that the County will be obligated to maintain these roads even in the face of increasing and unavoidable flooding and degradation as a result of sea level rise. As sea levels rise and storm surge becomes more intense as a result of predicted climate change impacts, the maintenance of these roads becomes a mounting expense for County taxpayers. County staff noted the perils of such costs warning, “[t]he costs to the County from addressing the infrastructure needs of a newly urbanized area are also of concern. Required infrastructure serving a development is typically built by the developer, and those portions within public rights-of-way, including public water, sanitary sewer infrastructure, sanitary sewer pump stations, and roadways, are typically conveyed to Miami-Dade County to be maintained in perpetuity as public infrastructure.” Regarding transit, the County staff reports that current routes do not cover the entirety of the project area. The applicant must provide new bus stops with full shelters in both directions along SW 112 Avenue and SW 268 Street. The existing bus stop along SW 112 Avenue at SW 256 Street will need two new full shelters, and the existing bus stop along SW 268 Street at SW 119 Place will need a full bus shelter. In addition, the Application would require another bus to be added to the Metrobus Route 35 to comply with the 20-minute headway requirement. Water and sewer connection will also be necessary. There are no existing water mains within the proposed development area and there is only a larger transmission force main in the development area.

F. There Is No Demonstrated Need for the Ordinance and Appropriate Data and Analysis Do Not Show Need.

76. CDMP Objective LU-1 states: “The location and configuration of Miami-Dade County's urban growth through the year 2030 shall emphasize concentration and intensification of

development around centers of activity, development of well-designed communities containing a variety of uses, housing types and public services, renewal and rehabilitation of blighted areas, and contiguous urban expansion when warranted, rather than sprawl.

77. LU-1C states: “Miami-Dade County shall give priority to infill development on vacant sites in currently urbanized areas, and redevelopment of substandard or underdeveloped environmentally suitable urban areas contiguous to existing urban development where all necessary urban services and facilities are projected to have capacity to accommodate additional demand.”

78. LU-8F states: “The Urban Development Boundary (UDB) should contain developable land having capacity to sustain projected countywide residential demand for a period of 10 years. The estimation of this capacity shall include the capacity to develop and redevelop around transit stations at the densities recommended in policy LU-7F. The adequacy of non-residential land supplies shall be determined on the basis of land supplies in subareas of the County appropriate to the type of use, as well as the Countywide supply within the UDB. The adequacy of land supplies for neighborhood- and community-oriented business and office uses shall be determined on the basis of localized subarea geography such as Census Tracts, Minor Statistical Areas (MSAs) and combinations thereof. Tiers, Half-Tiers and combinations thereof shall be considered along with the Countywide supply when evaluating the adequacy of land supplies for regional commercial and industrial activities.”

79. LU-8G states: When considering land areas to add to the UDB, *after demonstrating that a need exists*, in accordance with the foregoing Policy LU-8F: ... The following areas should be avoided: 1) Wetlands of Regional Significance as depicted on Figure 14 of the Land Use Element not otherwise listed in subsection (i)(b) of this policy; and I-16 2) Land

designated Agriculture on the Land Use Plan map, except where located in designated Urban Expansion Areas (UEAs); and 3) Comprehensive Everglades Restoration Plan projects identified in the 1999 Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, as may be modified formally or informally by the United States Army Corps of Engineers or the South Florida Water Management District; and 4) Land located within the FEMA V Zone.”

80. LU-10A states: “Miami-Dade County shall facilitate contiguous urban development, infill, redevelopment of substandard or underdeveloped urban areas, moderate to high intensity activity centers, mass transit supportive development, and mixed-use projects to reduce emissions and promote energy conservation. To facilitate and promote such development Miami-Dade County shall orient its public facilities and infrastructure planning efforts to minimize and reduce deficiencies and establish the service capacities needed to support such development.”

81. LU-8E provides that “[a]pplications requesting amendments to the CDMP Land Use Plan map shall be evaluated for consistency with the Goals, Objectives and Policies of all Elements, other timely issues, and in particular the extent to which the proposal, if approved, would: i) Satisfy a deficiency in the Plan map to accommodate projected population or economic growth of the County; ii) Enhance or impede provision of services at or above adopted LOS Standards; iii) Be compatible with abutting and nearby land uses and protect the character of established neighborhoods; and iv) Enhance or degrade environmental or historical resources; and v) Enhance or degrade systems important to the County as a whole including regional drainage, emergency management, transit service, roadways, facilities of countywide significance, and water quality; and vi) If located in a planned Urban Center, or within 1/4 mile of an existing or planned transit station, exclusive busway stop, transit center, or standard or express bus stop served by peak

period headways of 20 or fewer minutes, would be a use that promotes transit ridership and pedestrianism as indicated in the policies under Objective LU-7, herein.”

82. These Objective and Policies require the County to prioritize infill development on vacant sites in currently urbanized areas and redevelopment of substandard or underdeveloped, environmentally suitable urban areas contiguous to existing urban development where urban services and facilities have the capacities to accommodate additional demand. County Staff’s analysis of industrial land determined that over 500 acres of vacant land are zoned or designated for industrial uses in the applicable planning tier, and over 1,700 acres of parcels 10 acres or larger are available countywide. Furthermore, according to the County, approximately 12.7 million square feet of vacant industrial space are currently available countywide, which represents an increase of 39% of industrial space available for lease since the third quarter of 2018, while over the same time period, industrial rents have declined by 22.3%. Put simply, the CDMP sets clear standards for the threshold conditions for an expansion of the UDB, and clearly states that there must be a demonstrated need. The information provided, including in Miami Dade County Urban Expansion Area (UEA Report) conducted by the Department of Regulatory and Economic Resources (RER) states that there is no need to expand the UDB until 2030 at the earliest based on requirements laid out in LU-8F.3. The UEA Report states that there is sufficient capacity of industrial land both Countywide and within each analysis tier beyond 2040, except for the South-Central Tier which has a projected depletion year of 2030—still beyond the CDMP’s UDB planning horizon. This available developable capacity within the UDB is more than sufficient to accommodate project goals in this area. According to the County staff report, this application would extend the depletion of industrial land supply in the Southern tier by over 100 years, expiring in the year 2140. On July 21 2021, the Office of the County Mayor sent a memorandum

to County Commissioner Kionne McGhee analyzing the feasibility of expanding the UDB into UEA No. 3 which stated that, “Because the County’s own data indicates that the urbanized area contains sufficient land to address this need for the foreseeable planning horizon, on its face, this application would fail to meet the threshold standard set forth in Policy LU-8F, and the Department would thus have to recommend that the application be denied.” In short, the applicant has not demonstrated any need for expansion of the UDB to accomplish the stated goals of their project to provide employment opportunities.

83. County staff’s conclusion that there is no need for the project is beyond cavil. While the Applicant attempted to present data regarding need the County analyzed the data provided by Applicant, applied Applicant’s methodology (which County planners did not view as proper—but for argument’s sake, they applied it) and found that using Applicant’s methodology, there still is no demonstration of need given available land for industrial uses within the UDB. The Ordinance is thus inconsistent with the CDMP and not based on appropriate data and analysis.

84. County staff has likewise found, correctly, that the Amendment runs counter to each of the factors identified in LU-8E, quoted above. The Amendment is not needed to accommodate a demonstrable need. Expanding the UDB to convert agricultural land into industrial use without urban infrastructure significantly impairs County facilities and services, especially roadways, parks and recreation, and water and sewer. No data and analysis exist to determine the extent of the impacts that the Amendment would generate and thus to determine what mitigation measures may be required. The Amendment is incompatible with surrounding agricultural uses as found by County staff. The Amendment adversely impacts environmental resources, which, once again, County staff has documented. The Amendment degrades County resources and does not support transit ridership and pedestrianism.

85. The Amendment also is not needed from the standpoint of jobs creation. Section 163.3184(6)(a)2.i, Fla. Stat., states that “[t]he future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including ... [t]he need for job creation, capital investment, and economic development that will strengthen and diversify the community’s economy.” While the Applicant touted the jobs that the project would supposedly create, there is no appropriate data and analysis to support the Applicant’s inflated jobs and demonstrably flawed jobs analysis.

86. The Amendments are is inconsistent with the public facilities requirements in §163.3177(3)(a), and §163.3177(6)(a)8, Fla. Stat., which require a demonstration that the land to be impacted has the capacity and suitability for all of the public facilities and services needed to serve the proposed development in an environmentally sound manner, and without flooding neighboring properties.

87. Because of the unsuitability of this land for this intensive use, and about the availability of adequate, more suitable sites within the UDB to accommodate the proposed uses, the application is not supported by the best available, professionally acceptable, relevant data and analysis, as required by §163.3177 (1)(f) and (6) (a) (2) and (8), Fla. Stat.

88. The Amendments are inconsistent with §163.3177 (6) (a)(2)a, Fla. Stat, as they are not based upon the data and analysis identifying the “amount of land *required* to accommodate anticipated growth.”

89. The Amendments are inconsistent with §163.3177 (6) (a)(2)c, Fla. Stat., as they are not based upon the data and analysis concerning the character of the undeveloped land.

90. The Amendments are inconsistent with each provision of Ch. 163, Part II, Fla. Stat. identified in the above allegations.

III. CONCLUSION

For all the reasons stated above, the Amendments are not in compliance as required by Florida law.

IV. RELIEF SOUGHT

Petitioner requests the following relief pursuant to Section 163.3187, Florida Statutes:

1. This Petition be assigned to an Administrative Law Judge at DOAH for a Formal Administrative Hearing to determine the compliance of the Amendment with Chapter 163, Part II, Florida Statutes.
2. An Administrative Law Judge hold a formal administrative hearing and enter a Recommended Order finding the Amendment to be “not in compliance” under Florida law for the reasons set forth in this Petition.
3. The Administration Commission enter a Final Order finding the Amendment “not in compliance” with Chapter 163, Part II, Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed using the eALJ Electronic Filing System, this 1st day of December, 2022, which will send a notice of electronic filing to counsel of record. I further certify that the undersigned counsel will be served by electronic mail.

Service List	
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