



## Community Development Department

Jared E. Munster, Ph.D., AICP, CFM  
Director

# MEMORANDUM

**To:** Rafael G. Casals, ICMA-CM, CFM, Town Manager

**From:** Jared E. Munster, Ph.D., AICP, CFM, Community Development Director

**Date:** October 15, 2020

**Re:** Cutler Bay Civic And Resiliency Enhancement (CARE) Zone Designation (BN-2020-006)

## REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, MAKING FINDINGS AND DESIGNATING REAL PROPERTY IDENTIFIED BY FOLIO NUMBERS 36-6009-005-0015, 36-6009-005-0010, 36-6009-006-0010, 36-6009-006-0012, and 36-6009-006-0011 AS A BROWNFIELD AREA PURSUANT TO SEC. 376.80(2)(A), FLORIDA STATUTES, FOR PURPOSES OF ENVIRONMENTAL REHABILITATION, JOB CREATION, AND ECONOMIC DEVELOPMENT; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

## APPLICATION SUMMARY

**Staff Coordinator:** Jared E. Munster, Ph.D., AICP, CFM  
Community Development Director

**Location:** East side of Old Cutler Road between SW 208<sup>th</sup> Street and SW 212<sup>nd</sup> Street

**Total Acreage/Square Feet:** Approximately 32 acres

**Current Future Land Use Plan Map Designation:** Mixed Use

**Existing Zone:** NC-1, Neighborhood Commercial

**Folio Number(s):** 36-6009-005-0015, 36-6009-005-0010, 36-6009-006-0010, 36-6009-006-0012, 36-6009-006-0011

**Legal Descriptions:** Exhibit "A"





## **BACKGROUND AND ANALYSIS**

In 1997, the State of Florida passed the Brownfields Redevelopment Act which provides incentives for private parties and local government to voluntarily clean up and redevelop “brownfield” sites. In accordance with Federal and State brownfield regulations, a brownfield is any site with actual or perceived environmental contamination.<sup>1,2</sup> Since 1997, 23 local government entities (inclusive of municipalities, redevelopment agencies, and various single-purpose authorities) have utilized the State’s program to obtain over \$13 million in tax credits across 109 separate site clean-up projects.

The intent of the proposed Resolution is to designate the parcels identified by folio numbers 36-6009-005-0015, 36-6009-005-0010, 36-6009-006-0010, 36-6009-006-0012, and 36-6009-006-0011 (the “Cutler Bay CARE Zone”) as a brownfield area to be called the “Cutler Bay Civic And Resiliency Enhancement (CARE) Zone” pursuant to Section 376.80(2)(a), Florida Statutes (“F.S.”), of Florida’s Brownfield Redevelopment Act (the “Act”). These parcels are owned by four real property owners: the Town of Cutler Bay (the “Town”); Publix Super Markets, Inc. (“Publix”); Giorgio Dev., Inc.; and GCF Investments, Inc. (Giorgio Dev. Inc. and GCF Investments, Inc. are related entities and are together, “GCF”). Publix and GCF have been consulted and consent to designation of their parcels. A map of these parcels is included as Exhibit “B” of this report.

On September 11, 2020, the Town received a request from Publix Super Markets, Inc. to designate the parcel identified by folio number 36-6009-006-0012, as a brownfield area due to the presence of environmental contamination related to the parcel’s former agricultural uses (Exhibit C). This parcel is part of a larger former agricultural site that includes parcels owned by the Town as well as the parcels owned by GCF. The purpose of establishing the Cutler Bay CARE Zone is to promote environmental restoration and stewardship, economic redevelopment, and more sustainable growth patterns, among other purposes. Environmental restoration of vacant or underutilized property with actual or perceived contamination has been historically proven to remove stigma, reduce blight, improve air and stormwater quality, eliminate environmental health hazards, and in turn, spur redevelopment and revitalization. Recognizing the utility of the State’s Program as a tool for local governments to act as responsible environmental stewards to facilitate sustainable reuse of sites where redevelopment has been complicated by environmental issues. As a result of the Publix application and following conversations with with Town Counsel and the Town’s environmental consultant the Town Manager proposed designated the approximately 32-acre former agricultural site under the Act.

Through this designation, the Town is acting in its capacity as steward of the environment by facilitating potential environmental remediation, promoting sustainable economic development in a centrally-located area of the Town, and facilitating the provision of numerous new entertainment, restaurant, retail, and recreational opportunities for Town residents.

<sup>1</sup> [U.S. Environmental Protection Agency Brownfields Program](#)

<sup>2</sup> [Florida State Statutes Sections 376.77 through 376.86](#)





### Environmental Issues

Section 376.79(5), Florida Statutes ("F.S."), defines a "brownfield area" to mean "a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects." The term "brownfield site" is defined at Section 376.79(4), F.S., to mean "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination."

The Cutler Bay CARE Zone is made up of four parcels occupying a former agricultural site that operated for over 80 years. Although the presence of environmental contamination is always site-specific and varies based on numerous factors, long-term agriculture use is often considered a source for soil and groundwater contamination due to the historical application of herbicides, pesticides, and fertilizers. Such soil and groundwater contamination is not uncommon at former agricultural sites in southern Miami-Dade County. Former agricultural sites in Miami-Dade County are also subject to heightened assessment guidelines due to the likelihood of identifying contaminants associated with agricultural uses as redevelopment progresses. In 2020, Miami-Dade County's Department of Regulatory and Economic Resources, Division of Environmental Resources Management ("DERM") released new guidance requiring comprehensive soil and groundwater sampling at former agricultural sites undergoing redevelopment.

The Cutler Bay CARE Zone falls within the definition of a "brownfield area" due to the presence of one or more potential brownfield sites within the proposed boundaries of the Cutler Bay CARE Zone. Specifically, site assessment activities conducted at the parcel with folio number 36-6009-006-0012 (the "Publix Parcel") identified the presence of contaminants commonly associated with agricultural use. The complete environmental assessment report is provided as an Exhibit to this report. These contaminants included arsenic, lead, and dieldrin in soils above Florida Department of Environmental Protection ("FDEP") soil cleanup criteria and Miami-Dade County background levels as well as arsenic and iron in groundwater above FDEP groundwater cleanup criteria and Miami-Dade County background levels. Groundwater with concentrations of arsenic and iron above cleanup criteria is located largely in the center of the Publix Parcel and does not appear to be migrating.

The Town has engaged PEAR, Inc. to review the environmental data provided by Publix Super Markets, Inc. as part of their request for designation of their individual parcel (Exhibit "D"). PEAR also performed the Phase II review on the Town's parcels during the Town's acquisition of the property (Exhibit "E"). PEAR's comprehensive review of the environmental data, Phase II report, and DERM records support the determination that these parcels qualify for designation pursuant to Florida Statute. The complete statement of findings from PEAR is included in this report as Exhibit "F."





The presence of actual contamination on a portion of the proposed Cutler Bay CARE Zone has complicated reuse and redevelopment of this parcel by imposing costs associated with contamination assessment and response, the potential environmental regulatory and third-party legal liabilities associated with owning and developing the subject property, and the design modifications required to properly manage contaminated media during site development, construction activities, and beyond. The balance of the parcels making up the Subject Property also fall within the definition of “brownfield site” due to the perception of contamination arising from the Cutler Bay CARE Zone’s former use and the discovery of actual contamination in proximity to the remainder of the proposed Cutler Bay CARE Zone.

### *Brownfield Redevelopment Programs*

Since 1997, Florida’s Brownfields Program (“FBP”) has made a wide array of financial, regulatory, and technical incentives available to local governments, businesses, and communities to catalyze environmental cleanup and economic redevelopment of marginalized or otherwise underutilized properties. In doing so, the FBP has encouraged confidence in neighborhood revitalization and investment of private capital in land reuse and job creation in hundreds of communities throughout Florida. Brownfield areas have enjoyed a wide range of redevelopment uses, including vibrant entertainment districts, restaurant and retail space, conservation and recreation, affordable housing, community health clinics, commercial, renewable energy, and transportation facilities.

The FBP provides a very meaningful option, through economic and regulatory incentives, to overcome environmental complications and allow the property owners and future project developers to continue to move forward. For properties within a brownfield area that require environmental remediation, a Brownfield Site Rehabilitation Agreement (“BSRA”) may be executed with Miami-Dade County that will govern the cleanup process and allow access to various financial incentives including a Florida Corporate Income Tax Credit of 75% - 100% of eligible contamination response costs, which have historically been sold for 90 cents on the dollar. This program is governed by § 376.30781, F.S. and is known as the Voluntary Cleanup Tax Credit (“VCTC”) Program.

Additionally, from the Federal level, the US Environmental Protection Agency offers competitive grants to support brownfields assessment, planning and cleanup activities. Local governments, nonprofit organizations, states, and tribes are generally eligible to receive these grants, potential funding opportunities include:

- Assessment Grants (up to \$300,000) provide funding for brownfield inventories, planning, environmental assessments, and community outreach.
- Revolving Loan Fund (RLF) Grants (up to \$1,000,000) provide funding to capitalize loans that are used to clean up brownfield sites.
- Cleanup Grants (up to \$500,000) provide funding to carry out cleanup activities at brownfield sites owned by the applicant.
- Multipurpose (MP) Grants (up to \$800,000) provide funding to conduct a range of eligible assessment and cleanup activities at one or more brownfield sites in a target area.







Further, Florida Statute (Section 376-80(10)) specifically encourages local government to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas, to help eliminate the public health and environmental hazards, and to promote the creation of jobs and economic development in these previously run-down, blighted, and underutilized areas

#### *Examples of Brownfield Sites in Miami-Dade County*

The FBP has been a proven vehicle for rehabilitation and economic development in other Miami-Dade County municipalities. The City of Doral, for example, designated its 18-acre Doral Legacy Park Sports and Wellness Complex Green Reuse Area as a brownfield area in 2010 and entered into a BSRA with Miami-Dade County in 2015. The site was impacted by arsenic from muck soils which were removed from the site prior to construction. The park officially opened in 2017 and now serves as a central hub for the City's residents with athletic fields, an outdoor movie area, a 35,000 square foot community center, among other amenities. The City received a Site Rehabilitation Completion Order for the Legacy Park site in December 2018. Also in the City of Doral, the City's Passive Park Green Reuse Site was rehabilitated under a BSRA due to the presence of buried solid waste and arsenic-impacted soil. The City completed rehabilitation in 2018 and received a Site Rehabilitation Completion Order that year.

Other local examples include the Midtown Miami site which was rehabilitated and redeveloped under a BSRA executed in 2003. There, soil and groundwater were impacted by lead, arsenic, and petroleum contamination associated with historical industrial use. The site was redeveloped with 600,000 square feet of retail space, restaurant space, and over 3,350 residential units. The City of Miami Beach is also an active participant in the FBP, having designated the Miami Beach Convention Center site and the City's Maurice Gibb Park as brownfield areas. Areas of the Convention Center site were impacted by arsenic from former use as a golf course and the Maurice Gibb Park site was impacted by petroleum products from previous use as a gasoline service station. These examples show how other local municipalities have taken an active role in rehabilitating areas of the community for both public and private use to improve

The available financial incentives are also accessible to local governments. An analysis of the VCTC Program performed by The Goldstein Environmental Law Firm, P.A., from the year of program inception (1998) through August 2016 concluded 109 tax credit certificates in the total amount of \$13,473,306.07 had been awarded to 23 local government entities. Of those 23 entities, 14 were cities, 4 were Community Redevelopment Agencies, one was a locally owned utility, one a port authority, and one a school board. These tax credits can then be sold by local governments on the secondary market.

#### **PROPOSED ACTION AND DESIGNATION PROCESS**

Brownfield area designations are governed by the provisions of § 376.80, F.S. of Florida's Brownfields Redevelopment Act (the "Act"). The Act creates a two-tiered process, recognizing a distinction between designations that are brought forward by the jurisdictional local government itself and those brought forward by any other non-





governmental party. As a brownfield area designation initiated by the jurisdictional local government that is not located in a specified economic development area, the following process applicable to designations under §376.80(2)(a), F.S., is required:

(i) Adopt a Resolution pursuant to Fla. Stat. §376.80(1)(c)2.

§ 376.80(1)(c)2 of the Act incorporates certain notification and procedural criteria at § 166.041(3)(c)2, F.S., to the adoption of the designation resolution. The designation requires two advertised public hearings, one of which must be held after 5 p.m. on a weekday unless the local governing body by a majority plus one vote elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after notice is provided and the second hearing shall be held at least 10 days after the first hearing and shall be noticed at least 5 days prior to the public hearing. Notice may be provided either through publication in a newspaper of general circulation or by mailing notice to each person owning real property within the proposed Cutler Bay CARE Zone. To satisfy this requirement, two public hearings will be held on October 15, 2020, at 5:00 p.m. and October 28, 2020, at 7:00 p.m. Actual notice was mailed to the affected property owners on October 7, 2020.

(ii) Comply with enumerated notice and public hearings requirements pursuant to Fla. Stat. §376.80(1)(c)4.

Fla. Stat. § 376.80(1)(c)4.a states that at “*least one of the required public hearings shall be conducted as closely as is reasonably practical to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents’ considerations, and other relevant local concerns.*” The Council Chambers, through the current virtual meeting format, are sufficiently close to the proposed area to be designated as is reasonably practical given the COVID-19 pandemic, the physical proximity of the Chambers to the subject property, the disruption to the Commission’s schedule to reconvene at the subject property, the lack of any formal meeting facility with adequate facilities at the subject property, and the expectation by community members that any subsequent decisions by the Commission regarding the subject property will occur in Chambers.

Publix Super Markets, Inc. also held a virtual community meeting on September 28, 2020 at 5:30p.m. to afford neighbors an opportunity to comment and provide suggestions on the proposed designation of its parcel prior to the Town Manager’s determination to designate the full former agricultural site as the Cutler Bay CARE Zone. This public meeting was advertised in the Miami Herald and Community News, with proof of publication included here as Exhibit “G.”

Fla. Stat. § 376.80(1)(c)4.b requires that notice of the public hearing must be made in a newspaper of general circulation in the area, must be made in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. To meet this requirement, notice of the proposed designation was published in the Miami Herald,





on October 8, 2020, and signs were posted on SW 208<sup>th</sup> Street, SW 212<sup>nd</sup> Street, and Old Cutler Road on October 8, 2020, and the proposed designation was announced prior to the public hearing.

- (iii) at a public hearing, consider the following four factors:
1. whether the brownfield area warrants economic development and has a reasonable potential for such activities;
  2. whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;
  3. whether the area has potential to interest the private sector in participating in rehabilitation; and
  4. whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

Each of these four considerations is considered in detail below.

### **CONSIDERATION OF THE BROWNFIELD AREA DESIGNATION FACTORS**

Section 376.80(2)(a), F.S., lists four factors that must be considered by a local government prior to designating property outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated Brownfield pilot project area as a brownfield area. *The statute does not require a particular finding with respect to any of the four enumerated criteria, only that they be “considered.”* After such consideration, staff concludes as follows with respect to the proposed Cutler Bay CARE Zone:

#### **1. The proposed brownfield area warrants economic development and has a reasonable potential for such activities.**

The proposed Cutler Bay CARE Zone is centrally located in the Town along Old Cutler Road and has sat largely vacant for a number of years prior to the start of redevelopment on the Publix Parcel. The perception of contamination on the parcels making up the Cutler Bay CARE Zone constitutes a liability as a result of the costs associated with implementing appropriate response actions to protect human health and the environment, including but not limited to continuing to engage qualified remediation contractors to perform the assessment and remediation activities required by law under DERM’s oversight. Economic development is a proven vehicle for restoring the viability of this type of property, sparking interest and capital investment by the private sector and leveraging public incentive programs to create new tax revenues for the Town, important amenities and services for the Town’s residents, and a subsidized and regulatorily-enhanced process for contamination response activities. The diminishing amount of open space available for new development in the Town makes redevelopment projects on smaller, previously used properties even more essential to continued economic development for the Town. The Subject Property not only has a reasonable potential for such activities but has already generated interest from developers including Publix which is investing in excess of \$33 million to build the Shoppes of Cutler Bay retail shopping center on the Publix Parcel.





**2. The proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage.**

The proposed Cutler Bay CARE Zone represents a carefully focused approach to redevelopment, emphasizing a calibrated mix of recreational, public health, residential, and public and private revenue generating type activities that leverages proximity to the Town's residents, existing infrastructure, walkability, and the integration of the built environment with the natural environment by mandating private sector investment in accelerating remediation, incorporating green construction materials, improving stormwater quality, and engaging in environmental and climate-stewardship initiatives. Additionally, at just over 32 acres, the area to be designated is not overly large in geographic coverage. As reflected in the table below, approximately 24% of brownfield areas in Florida are between 10 and 50 acres in size, with many in Miami-Dade County measuring in the hundreds or thousands of acres. The proposed Cutler Bay CARE Zone also covers only the area occupied by the former agricultural site, thus representing a carefully focused approach intended to address the redevelopment complications associated with that use.

<b>Analysis of Designated Brownfield Areas in Florida by Acreage Range (Keyed to FDEP Brownfield Area Monthly Status Report, February 1, 2019)</b>		
<b>Acreage Range</b>	<b>Brownfield Areas within Category</b>	<b>% of All Designations</b>
≤ 1.0	32	6.85%
1.1 – 5.0	73	15.63%
5.1 - 10.0	63	13.49%
10.1 – 50.0	115	24.63%
50.1 -100.0	26	5.57%
100.1 – 500.0	63	13.49%
500.1 – 1,000.0	35	7.49%
1,000.1 – 5,000.0	46	9.85%
5,000.1 – 10,000.0	8	1.71%
>10,000.0	6	1.28%
<b>Totals</b>	<b>467*</b>	<b>100.00%</b>

*\*FDEP reported 0.0 acres for 4 designations in Pensacola in 2011, 1 in Brevard County in 2012, 1 in Lakeland in 2016, 1 in Ocoee in 2018, 1 in Tampa in 2018, and 1 in Deerfield Beach in 2018. Accordingly, these designations are not reflected in our analysis, and the total count reflected herein trails the official FDEP count by 9.*







**3. The proposed area has the potential to interest the private sector in participating in rehabilitation.**

The Cutler Bay CARE Zone has already involved the private sector in rehabilitation and will certainly continue to do so. Restoration and reuse of land in the Cutler Bay CARE Zone will create an important conservation, recreation, and wellness amenity for the Town and will make it much more likely that the private sector will become interested in rehabilitation matters. In particular, approval of the designation and facilitating access and to the state financial and regulatory incentives that comes with the designation will serve as a model to the Town's residents and business to demonstrate that environmentally impaired land can be safely reused in a way that protects human health and the environment while simultaneously achieving important economic goals. This is an important strategy for the Town and planning tool for staff to encourage the investment of private capital in rehabilitation and redevelopment

Private sector involvement at the proposed Cutler Bay CARE Zone has already occurred in relation to work on the Publix Parcel. Publix engaged private environmental consulting and engineering contractors to assist in assessment and oversight of site rehabilitation work. These contractors have already completed remediation of contaminated soils on the Publix Parcel and will continue to be involved in groundwater monitoring under Miami-Dade County's supervision. The GCF Investments Parcels are also privately owned and, if necessary, will be rehabilitated and redeveloped by the private sector. With respect to the Town's parcel, the involvement by private environmental consulting and engineering would be essential if rehabilitation is required. Additional private sector opportunities may be available for future redevelopment of the Town's parcel in the form of additional environmental consulting and engineering work and construction activities.

**4. The proposed area contains land suitable for limited recreational open space.**

Future redevelopment plans for the Town's parcel include a 16-acre park and Town Center complex which will provide significant area suitable for recreational open space. This "central park" will be accessible to the surrounding community through walkable landscaped areas and will provide multiple opportunities for outdoor entertainment, health, wellness, sporting activities, and community bonding. Integration of the planned Town park component with the surrounding community, including the adjacent shopping center, will provide additional outdoor dining and entertainment opportunities within walking distance for users of the park.

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## **COMPLIANCE WITH GROWTH MANAGEMENT PLAN AND LAND DEVELOPMENT REGULATIONS**

The proposed creation of the Cutler Bay CARE Zone aligns with the goals and objectives adopted through the Growth Management Plan and the Land Development Regulations. Specifically, proactive environmental action aligns directly with the following elements of the Growth Management Plan:

### **Conservation**

- **Objective C-5 The Town will conserve and protect the remaining natural systems of Cutler Bay in recognition of the inherent values of these areas left in their natural state.**
  - Policy C-5F: Any new development project is to demonstrate that it does not create a substantial adverse impact to the environment.
- **Objective C-12 The Town will take measurable steps towards becoming a “sustainable” community by providing a healthy setting for residents, workers, and visitors and increase public and private awareness of green building practices.**
  - Policy C-12C: The Town will pursue all available local, state and federal incentives to achieve environmental goals.
  - Policy C-12D: The Town encourages mixed-use development and infill development.

Further, the proposed redevelopment of properties within the Cutler Bay Care Zone are aligned with the adopted Land Development Regulations. On the Publix parcel, the full redevelopment of this site, with multiple commercial structures anchored by a large grocery store was approved by the Town Council in Resolution 18-79, and is consistent with the standards of the NC-1, Neighborhood Commercial District and the design guidelines of the Land Development Regulations. The proposed civic complex and central community park planned for the Town’s parcels also align with the intention of the NC-1, Neighborhood Commercial District and will provide a center for Town government operations and a large community-scale park for enjoyment of present and future generations of Cutler Bay residents.

## **RECOMMENDATION**

As a result of this analysis, staff, in consultation with Town environmental consultant PEAR Inc., has evaluated the four criteria for designation provided by State Statute as well as the environmental data incorporated into the Staff Report by reference and recommends **Adoption** of a Resolution of the Town of Cutler Bay designating the site as the Cutler Bay Civic And Resiliency Enhancement (CARE) Zone pursuant to § 376.80(2)(A) of Florida State Statutes.





## **EXHIBITS**

- Exhibit "A" – Legal Descriptions
- Exhibit "B" – Map of Subject Parcels
- Exhibit "C" – Publix Letter of Request.
- Exhibit "D" – Site Asmt Report -Publix Site
- Exhibit "E" – Phase II Environmental Asmt
- Exhibit "F" – Environmental Report
- Exhibit "G"– Publix Public Hearing Notices

