



**OFFICE OF THE COMMISSION AUDITOR
MIAMI-DADE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION AUDITOR'S
INFORMATIONAL RESEARCH**

**INFRASTRUCTURE AND CAPITAL
IMPROVEMENTS COMMITTEE MEETING**

October 14, 2020

2:00 P.M.

Virtual Meeting

Yinka Majekodunmi, CPA
Commission Auditor

Office of the Commission Auditor (OCA)
111 N.W. First Street, Suite 1030
Miami, FL 33128
(305) 375-2524

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**Item No. 3B
File No. 201677**

Researcher: MF Reviewer: PGE

RESOLUTION APPROVING THE BROWNFIELDS DELEGATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE STATE OF FLORIDA; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE BROWNFIELDS DELEGATION AGREEMENT AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN; APPROVING THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT, THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT AMENDMENT, AND THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT ASSIGNMENT AND ASSUMPTION; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MODEL BROWNFIELDS AGREEMENTS AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

ISSUE/REQUESTED ACTION

Whether the Board should authorize the approval of the Brownfields Delegation Agreement between the County and the State of Florida for the Model Brownfields Site Rehabilitation Agreement (BSRA) and Amendment as well as the BSRA Assignment and Assumption.

PROCEDURAL HISTORY

Sponsor: Infrastructure and Capital Improvements Committee

Department/Requester: Department of Regulatory and Economic Resources (RER)

This item has no procedural history currently.

ANALYSIS

The purpose of this item is for the Board to approve the Brownfields Delegation Agreement between the County and the State of Florida for the Model Brownfields Site Rehabilitation (BSRA) Agreement, thereby replacing the existing agreement approved by the Board in September 2010 and pursuant to Resolution No. 942-10. Approval of this item will effectuate a 10-year agreement for the period encompassing October 22, 2020 through October 22, 2030. Additionally, the agreement would allow the County to execute the BSRA and corresponding documentation for those qualified redevelopers that intend to decontaminate sites within designated Brownfield areas. More specifically, this item approves a Model BSRA Agreement and Amendment as well as a Model BSRA Assignment and Assumption in order to revise and assign the BSRA per guidelines established by the Florida Department of Environmental Protection (FDEP). In the County, Brownfield areas are located in unincorporated areas within the Urban Development Boundary of the Enterprise Zones, Enterprise Communities and Empowerment Zones.¹

The purpose of the Brownfields program is to incentivize property owners to redevelop sites where hazardous substances such as pollutants or contaminants may exist.² Aside from protecting human health and the environment, local jurisdictions promote the voluntary cleanup and the development and redevelopment of Brownfield areas as a way to increase economic and employment opportunities, thereby leading to an increase in that area's tax base and a reduction in suburban sprawl. In return for developing on a Brownfield site, tax incentives, loan guarantees, sales tax credit on building materials and site assessment assistance are provided.

¹Department of Regulatory and Economic Resources, Brownfields Program, <https://www.miamidade.gov/business/brownfields.asp>

²U.S. Environmental Protection Agency, Overview of EPA's Brownfields Programs, <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

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Consistent with Florida Statutes Section 376.80(9), FDEP supports for the agency to broker delegation agreements with local pollution control programs in order to manage Brownfield Programs as a means to incorporate this with ongoing revitalization efforts to enable redevelopment of Brownfield sites or areas. In Miami-Dade, the RER (Department of Regulatory and Economic Resources)-DERM (Division of Environmental Resource Management) serves as the approved local pollution control program and can accept the designation. As such, approval of this item ratifies the continuing RER-DERM pollution control program designation.

In July 1999, the Board adopted Ordinance No. 99-85 and Resolution No. R-767-99, designating Brownfield areas as a way to spur economic and regulatory incentives to redevelop and revitalize contaminated sites throughout the unincorporated areas of the County. The Florida Legislature enacted the Brownfield Development Act in 1997 as a way to reduce public health and environmental dangers on existing commercial and industrial properties that are abandoned as a result of such hazards for such things as ground-water contamination.³

In December 1999, pursuant to Resolution No. R-1355-99, the Board authorized the County to execute BSRAs with eligible property owners or individuals interested in revitalizing contaminated properties in designated Brownfield areas. Said agreement spanned 10 years from October 24, 2010 through September 21, 2010 (under Resolution No. 942-10). The existing agreement under item expires October 22, 2020; this item is scheduled to travel to the Board at its November 19, 2020 BCC meeting.

Although the mayoral memo cites this item as having no fiscal impact, administration of the Brownfields Program requires staffing by RER-DERM. Additional information pertaining this is found under the “Departmental Input” section of this research note.

Under this item, the scope of the Delegation for program activities delegated to the County provide for the following:

- The responsibility to confirm that sites entering the Florida Brownfields Redevelopment Program meet all program eligibility requirements provided in Florida Statutes Section 376.82, prior to execution of a BSRA
- The authority to administer Florida Administrative Code Sections 376.80-376.83 and Florida Administrative Code Chapters 62-780 and 62-777 on behalf of the Department relating to the Brownfields Redevelopment Act within MDC
- The authority to negotiate, execute, and ensure compliance of Brownfield Site Rehabilitation Agreements for Brownfield sites within a designated area, consistent with the substantive requirements of the most current Model BSRA as maintained by the Department
- The authority to review and approve, approve with modifications and/or comments, or disapprove all technical documents submitted pursuant to the Brownfields Redevelopment Act and Florida Administrative Code Chapters 62-780 and 62-777 within Miami-Dade County including authority to issue Final Orders under the provisions of Florida Administrative Code Chapter 62-780.
- The authority to administer Florida Statutes Section 376.81 for sites covered under the executed Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental

³Florida Department of Environmental Protection, Brownfields Program, <https://floridadep.gov/waste/waste-cleanup/content/brownfields-program>

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Protection Agency Region 4; The parties acknowledge that separate delegations made by the Department and MDC shall continue in full and are unaffected by this Agreement.

OCA consulted FDEP's Geographic Information System (GIS) GeoViewer website (which tracks all Brownfield areas and sites across the state's 67 counties and their corresponding jurisdictions) to access information pertaining to unincorporated Miami-Dade County.⁴ Table 1 provides a snapshot of Brownfield-designated areas and approximate acreages, as per the information listed in GeoViewer. Note: the figures listed below are rough estimates limited to the available data presented in the GeoViewer database.

Table 1

Miami-Dade County Brownfields	
Area	Approximate Acreage
Florida City Unincorporated	419
Redlands/Leisure City Area	2,140
Homestead Wal-Mart	5.84
South Dade Area	5,113
Mirabella Brownfield Area	10
Perrine Area	2,702
Lingren	90
Richmond Heights Area	641
Kendall West	271
7090 Coral Way	19
Westchester	489
Coral Terrace	317
8400 Coral Way	10
Glenvar Heights	57
South Miami Area	20
Sweetwater C Area	782
Fountainbleau	41
Sweetwater D	995
Central Miami Area	4,111
Miami Industrial	51
Miami-Dade Regional Soccer Park BF Redevelopment Area	47
Model City/Brownsville Area	9,800
Golden Glades A	165
Dade-Opa-Locka Area	2,688
Carol City Area	3,996
Golden Glades C	62
Opa-Locka Area	1,423

⁴Florida Department of Environmental Protection, Brownfields GIS GEO Viewer, <https://ca.dep.state.fl.us/mapdirect/?focus=brnfls>

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Area	Approximate Acreage
Westview	0.77
Golden Glades B	30
Eastern Shore A	5
Eastern Shore B	143
Ojus	522
Golden Glades G	216
Golden Glades D	41
Golden Glades F	4.8
Eastern Shore C	95
Golden Glades E	197
Biscayne Park	232

ADDITIONAL INFORMATION

The U.S. Environmental Protection Agency (EPA) projects there are more than 450,000 Brownfield sites across the United States.⁵ OCA surveyed metro areas throughout the state that administer Brownfield programs. Table 2 below depicts some jurisdictions and their respective Brownfield programs.

Table 2

Jurisdiction	Brownfields Program Status
Broward County	As of May 1, 2020, there are 41 Brownfields-designated areas, totaling approximately 6,896 acres (10.9 square miles) ⁶
Hillsborough County (Tampa)	As of 2020, there are 67 Brownfields-designated sites, totaling approximately 906 acres ⁷
City of Orlando	As of 2020, there are 12 Brownfield sites ⁸
City of Jacksonville	As of 2020, there are 143 Brownfield sites with an approximate acreage of 2,093 ⁹
Duval County	As of 2020, there are 41 Brownfields-designated sites ¹⁰

⁵U.S. Environmental Protection Agency, Overview of EPA's Brownfields Programs, <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

⁶ Broward County, Brownfields, <https://www.broward.org/Environment/Brownfields/Pages/Default.aspx>

⁷ Email correspondence from Hillsborough County received October 8, 2020.

⁸ City of Orlando, Brownfields Program, <https://www.orlando.gov/Our-Government/Records-and-Documents/Plans-Studies/Brownfields-Program>

⁹ Email correspondence from City of Jacksonville received October 12, 2020.

¹⁰Duval County, Brownfields Program, <https://floridadep.gov/waste/waste-cleanup/content/duval-county-brownfield-areas-and-sites>

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Illustrations 1, 2 and 3 show examples of Brownfield sites pre and post remediation and rehabilitation of the land and soil in the respective areas.

Illustration 1



Source: NC State University¹¹

Illustration 2



Source: City of Brantford, Ontario Canada¹²

¹¹North Carolina State University, Center for Environmental and Resource Economic Policy, <https://cenrep.ncsu.edu/2016/07/14/remediated-brownfield-sites-environmental-and-property-value-benefits/>

¹²City of Brantford, Ontario Canada, Brantford Remediation Recognized as one of Canada's Top Environmental Cleanup Projects, February 22, 2019, <http://blog.discoverbrantford.ca/Blog/tabid/90/ArticleID/862/Brownfield-Remediation-Recognized-as-one-of-Canada%E2%80%99s-%E2%80%9CTop-Environmental-Clean-Up-Projects%E2%80%9D.aspx>

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Illustration 3



Source: City of Tallahassee¹³

DEPARTMENTAL INPUT

OCA sent the following inquiry to RER on October 13, 2020; as of publication of this note, the Department had not responded.

- What is the interplay between this program and Opportunity Zones?
- Is the Brownfields program considered successful? If so, how is success measured?
- How many sites are developed per year?
- Which developers are participants?
- Kindly provide the staffing requirements to administer the Brownfields Program (provide the number of staff and their annual salaries for those positions that manage or are assigned to the County's Brownfields program).
- Does said staffing for Brownfields constitute a fiscal impact to the County?

¹³ City of Tallahassee, Brownfields Program, <https://www.talgov.com/sustainability/brownfields.aspx>

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- What is the total amount of annual fees collected from Brownfields?
- What percentage of the fees offset the salaries of staff who oversee the Brownfields Program? Kindly explain.

APPLICABLE LEGISLATION/POLICY

2018 Build Act, Division N of Consolidated Appropriations Act, 2018 provides guidelines for the Brownfields Utilization, Investment, and Local Development Act of 2018, known as the Build Act.

<https://www.epa.gov/sites/production/files/2018-04/documents/omnibus3.22.18.brownfields.pdf>

Florida Statute Section 376.80(9) regulates the Brownfield Program Administration Process. This section provides for the following: If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82 are revoked.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0376/Sections/0376.80.html

Florida Statute Section 403.182 regulates local pollution control programs. (1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act. Local pollution control programs in existence on the effective date of this act shall not be ousted of jurisdiction if such local program complies with this act. All local pollution control programs, whether established before or after the effective date of this act, must: (a) Be approved by the department as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto. (b) Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder. (c) Provide for the enforcement of such requirements by appropriate administrative and judicial process. (d) Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program. (2) The department shall have the exclusive authority and power to require and issue permits; provided, however, that the department may delegate its power and authority to local pollution control organizations if the department finds it necessary or desirable to do so. (3) If the department finds that the location, character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air and water quality without an areawide pollution control program, the department may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

<https://www.flsenate.gov/Laws/Statutes/2019/0403.182>

Ordinance No. 99-85, adopted July 13, 1999, designated Brownfield areas in unincorporated Miami-Dade County for the purpose of environmental rehabilitation and economic development; providing and adopting a map designating the Brownfield areas.

<http://intra/gia/matter.asp?matter=991512&file=false&yearFolder=Y1999>

Resolution No. 942-10, adopted September 21, 2010, approved the Brownfields Delegation Agreement between the County and the State of Florida; authorizing the mayor or designee to execute the Brownfields Delegation Agreement for and on behalf of the County and to exercise the modification and termination provisions contained therein; approving the

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revised Model Brownfield Site Rehabilitation agreement and attached instructions; and authorizing the mayor or designee to execute Brownfield Site Rehabilitation agreements for and on behalf of the County.

<http://intra/gia/matter.asp?matter=101586&file=true&yearFolder=Y2010>

Resolution No. R-767-99, adopted July 13, 1999, designated Brownfield areas in unincorporated Miami-Dade County for the purpose of environmental rehabilitation and economic development; providing and adopting a map designating the Brownfield areas.

<http://intra/gia/matter.asp?matter=991544&file=false&yearFolder=Y1999>

Resolution No. R-1355-99, adopted December 16, 1999, approved the Brownfields Delegation Agreement between the County and the State of Florida; authorizing the County Manager to execute the Brownfields Delegation Agreement for and on behalf of the County and to exercise the modification and termination provisions contained therein; approving the Model Brownfields Site Rehabilitation Agreement and attached instructions.

<http://intra/gia/matter.asp?matter=993158&file=false&yearFolder=Y1999>

CONTRIBUTORS

Phillip G. Edwards, Esq., Legislative Research Manager
Mireidy Fernandez, Ph.D., Research Analyst

The Office of the Commission Auditor, Miami-Dade Board of County Commissioners

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).