MEMORANDUM

TO: Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners

FROM: Geri Bonzon-Keenan County Attorney

DATE: June 13, 2023

SUBJECT: Resolution directing the County Mayor to take all steps necessary for this Board to enter into a compliance agreement pursuant to section 163.3184, Florida Statutes, to resolve the pending challenges to Ordinance No. 22-148, which approved the comprehensive plan amendment application filed by Aligned Real Estate Holdings LLC and others to expand the Urban Development Boundary (the “Aligned Amendment”); and directing the County Attorney’s Office to refrain from instituting, joining, or pursuing any legal action supporting the Aligned Amendment, and to refrain from defending against any legal challenge opposing the Aligned Amendment.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.

GBK/uw
MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
    and Members, Board of County Commissioners

DATE: July 6, 2023

FROM: Gail Bonzon-Keenan
      County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

______ “3-Day Rule” for committees applicable if raised

______ 6 weeks required between first reading and public hearing

______ 4 weeks notification to municipal officials required prior to public
        hearing

______ Decreases revenues or increases expenditures without balancing budget

______ Budget required

______ Statement of fiscal impact required

______ Statement of social equity required

______ Ordinance creating a new board requires detailed County Mayor’s
        report for public hearing

______ No committee review

______ Applicable legislation requires more than a majority vote (i.e., 2/3’s
        present ____, 2/3 membership ____, 3/5’s ____ , unanimous ____ , CDMP
        7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote
        requirement per 2-116.1(3)(h) or (4)(c) _____ , or CDMP 9 vote
        requirement per 2-116.1(4)(c)(2) ____ ) to approve

______ Current information regarding funding source, index code and available
        balance, and available capacity (if debt is contemplated) required
RESOLUTION NO. ______________________

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO TAKE ALL STEPS NECESSARY FOR THIS BOARD TO ENTER INTO A COMPLIANCE AGREEMENT PURSUANT TO SECTION 163.3184, FLORIDA STATUTES, TO RESOLVE THE PENDING CHALLENGES TO ORDINANCE NO. 22-148, WHICH APPROVED THE COMPREHENSIVE PLAN AMENDMENT APPLICATION FILED BY ALIGNED REAL ESTATE HOLDINGS LLC AND OTHERS TO EXPAND THE URBAN DEVELOPMENT BOUNDARY (THE “ALIGNED AMENDMENT”); AND DIRECTING THE COUNTY ATTORNEY’S OFFICE TO REFRAIN FROM INSTITUTING, JOINING, OR PURSUING ANY LEGAL ACTION SUPPORTING THE ALIGNED AMENDMENT, AND TO REFRAIN FROM DEFENDING AGAINST ANY LEGAL CHALLENGE OPPOSING THE ALIGNED AMENDMENT

WHEREAS, on November 1, 2022, this Board adopted Ordinance No. 22-148, approving an application to amend the Miami-Dade County Comprehensive Development Master Plan (“CDMP”) filed by Aligned Real Estate Holdings LLC and others to expand the Urban Development Boundary (the “Aligned Amendment”); and

WHEREAS, the Aligned Amendment redesignates certain land on the CDMP Land Use Plan map from “Agriculture” to “Special District,” amends the CDMP Land Use Element’s text to create the “South Dade Logistics & Technology District,” and makes various other changes to the CDMP, including accepting a proffered declaration of restrictions, to allow for certain commercial and industrial development in the Special District; and
WHERERAS, in December 2022, two petitions were timely filed with the Florida Division of Administrative Hearings (“DOAH”), in the cases styled Rementeria v. Miami-Dade County, Case No. 22-3654GM, and Lewis v. Miami-Dade County, Case No. 22-3671GM (since consolidated into a single case and referred to as the “DOAH Proceeding”), challenging whether the Aligned Amendment is “in compliance” with various requirements set forth in chapter 163, Florida Statutes; and

WHERERAS, the petitions allege, among other things, that the Aligned Amendment’s impacts on coastal management, agriculture, the Comprehensive Everglades Restoration Plan, and water quality render the Aligned Amendment internally inconsistent with the CDMP and not properly supported by data and analysis; and

WHERERAS, on January 26, 2023, the Florida Department of Economic Opportunity (“DEO”) issued a letter (attached hereto as Attachment A) determining that the County did not comply with state procedural requirements regarding the timing of the County’s adoption of the Aligned Amendment, and it reaffirmed that determination on March 7, 2023, in a letter (attached hereto as Attachment B) rejecting the County’s responses to the original letter; and

WHERERAS, the Miami-Dade County Attorney’s Office is responsible for, among other things, defending this Board’s decisions from legal challenges and, when necessary, instituting or joining legal challenges to protect this Board’s decisions; and

WHERERAS, the County Attorney’s Office has therefore been defending the Aligned Amendment in the DOAH Proceeding and in response to DEO; and

WHERERAS, to that end, on May 8, 2023, the County Attorney’s Office, together with the applicants of the Aligned Amendment, filed, in the Circuit Court in and for Leon County, Florida, the case styled Miami-Dade County, Aligned Real Estate Holdings, LLC, South Dade Industrial
Partners, LLC, Bedrock South Dade 112 Avenue, LLC, and Bedrock South Dade 268 Street, LLC v. Florida Department of Economic Opportunity, Case No. 2023 CA 001487 (the “DEO litigation”), to challenge DEO’s determination that the County did not comply with certain state procedural requirements for the Aligned Amendment; and

WHEREAS, this Board wishes to resolve the pending challenges rather than continue to litigate over the Aligned Amendment; and

WHEREAS, the Aligned Amendment was adopted by an ordinance approved by this Board pursuant to a specific process set forth in section 163.3184, Florida Statutes, and section 2-116.1 of the Code of Miami-Dade County, Florida (the “Code”), and neither the statute nor the Code provide a process to simply rescind an approval; and

WHEREAS, section 163.3184(6), Florida Statutes, provides that, at any time after the filing of a challenge, the local government may voluntarily enter into a compliance agreement with DEO and private challengers to resolve one or more of the issues raised in the DOAH Proceeding; and

WHEREAS, under state law, the parties who had submitted the application for the Aligned Amendment would be provided reasonable notice of the commencement of a compliance agreement negotiation process and a reasonable opportunity to participate in such negotiation process; and

WHEREAS, negotiation meetings would be open to the public; and

WHEREAS, state law provides that the compliance agreement shall list each portion of the plan amendment that has been challenged and shall specify remedial actions that the local government has agreed to complete within a specified time in order to resolve the challenge, including adoption of all necessary plan amendments; and
WHEREAS, state law further provides that the compliance agreement may also establish monitoring requirements and incentives to ensure that the conditions of the compliance agreement are met; and

WHEREAS, prior to entering into a compliance agreement, this Board would be required to hold a public hearing that is advertised in accordance with statutory requirements; and

WHEREAS, the compliance agreement may provide for the County to adopt remedial plan amendments to address the challenges, and any such plan amendments would be subject to a single public hearing before this Board; and

WHEREAS, this Board wishes to direct the County Mayor or County Mayor’s designee to negotiate a compliance agreement pursuant to which the Aligned Amendment could be rescinded; and

WHEREAS, this Board thus finds it proper to direct the County Attorney’s Office to neither institute, join, nor pursue a legal challenge supporting the Aligned Amendment, nor defend against any legal challenge opposing the Aligned Amendment, including but not limited to the DOAH Proceeding and the DEO litigation,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated herein and are approved.

Section 2. This Board directs the County Mayor or County Mayor’s designee to take all steps necessary for this Board to enter into a compliance agreement pursuant to section 163.3184, Florida Statutes, to resolve the pending challenges such that the Aligned Amendment may be rescinded.
Section 3. This Board directs the County Attorney’s Office to refrain from instituting, joining, or pursuing any legal action supporting the Aligned Amendment, including but not limited to the DEO litigation, or from defending against any legal challenge opposing the Aligned Amendment, including but not limited to the DOAH Proceeding.

The Prime Sponsor of the foregoing resolution is Commissioner Danielle Cohen Higgins. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman
Anthony Rodríguez, Vice Chairman
Marleine Bastien  Juan Carlos Bermudez
Kevin Marino Cabrera  Sen. René García
Roberto J. Gonzalez  Keon Hardemon
Danielle Cohen Higgins  Eileen Higgins
Kionne L. McGhee  Raquel A. Regalado
Micky Steinberg
The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of July, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: _____________________
   Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.

Dennis A. Kerbel
Christopher J. Wahl
January 26, 2023

Ms. Lourdes Gomez, AICP, Director
Miami-Dade County
Department of Regulatory and Economic Resources
111 NW 1st Street, 11th Floor
Miami, Florida 33128-1902

RE: Miami-Dade County Ordinance 22-148

Dear Ms. Gomez:

In a letter dated December 27, 2022 (the "Preliminary Inventory Letter"), the State Land Planning Agency ("DEO") acknowledged receipt, and accepted, Miami-Dade County's Plan Amendment No. 22-07ESR, which was proposed by Ordinance No. 22-148 on November 1, 2022 (the "Plan Amendment").

DEO has reviewed the proposed comprehensive plan amendment. The review was completed under the expedited state review process.

However, prior to addressing the substance of our review, DEO's response does need to address the agency's interpretation of the Miami-Dade County's Plan Amendment No. 22-07ESR.

The facts are that on September 9, 2021, Miami-Dade County Board of County Commissioners held a public hearing and voted to transmit proposed Miami-Dade County Plan Amendment 21-02ESR. On September 22, 2021, DEO received the proposed amendment package, which included the following amendments:

- Proposed Property Rights Element Amendment; and
- Proposed Urban Development Boundary Amendments (included updates to its Future Land Use Map and associated text changes, expanding the Urban Development Boundary).

On October 22, 2021, DEO responded to Miami-Dade County regarding the proposed amendment with technical assistance comments, including comments related to:

- Military Compatibility;
- Internal Consistency;
- Agency Coordination; and
- Orderly and Balanced Future Development

April 4, 2022 - Miami-Dade County notified DEO of an extension of the 180-day deadline to hold a public hearing for the amendment to October 27, 2022. On April 5, 2022, DEO acknowledged the extension of the 180-day deadline to October 27, 2022.
On April 21, 2022, Miami-Dade County held a public hearing and adopted part of the comprehensive amendment package, approving the proposed Property Rights Element. In other words, the Property Rights Element Amendment was bifurcated from the amendments expanding the Urban Development Boundary. On May 20, 2022, DEO received the adopted Property Rights Element Amendment (21-02ESR, Ordinance 22-040), separate from the Urban Development Boundary Amendments. On June 8, 2022, DEO notified Miami-Dade County that DEO would not challenge the adopted Property Rights Element Amendment.

At this point, DEO could reasonably conclude that Miami-Dade County’s actions represented the end of any process for Miami-Dade County Plan Amendment 21-02ESR and that further consideration of the Amendment, as originally submitted, was mooted. This conclusion was further supported by the actions of Miami-Dade County thereafter.

On November 1, 2022, Miami-Dade held a hearing to adopt the Miami-Dade County’s Plan Amendment No. 22-07ESR – effectively, the same Urban Development Boundary Amendments that were originally proposed as part of the 21-02ESR Amendment package, but not adopted as part of the Property Rights Element Amendment (Resolution 22-40) adopted on April 21, 2022.

Without question, this November 1, 2022, hearing occurred after DEO’s acknowledgement of the extension of the 180-day deadline to October 27, 2022. Therefore, DEO’s interpretation of Miami-Dade County’s Plan Amendment No. 22-07ESR is that the Amendment is a new proposed Amendment. In other words, Miami-Dade County’s Plan Amendment No. 22-07ESR represents an entirely new process and statutory obligations.

To that end, while Miami-Dade County’s Plan Amendment No. 22-07ESR represents an entirely new process and merits comment, DEO strongly considered the fact that the substance in the Amendment was contained in Miami-Dade County Plan Amendment 21-02. Therefore, DEO deems it appropriate to resubmit the attached response from October 22, 2021, to serve as technical assistance comments, including technical assistance comments that were again related to:

- Military Compatibility;
- Internal Consistency;
- Agency Coordination; and
- Orderly and Balanced Future Development

The County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment.

Sincerely,

James D. Stansbury, Bureau Chief
Bureau of Community Planning and Growth
October 22, 2021

The Honorable Daniella Levine Cava
Mayor, Miami-Dade County
Stephen P. Clark Center
111 NW 1st Street, 29th Floor
Miami, Florida 33128

Dear Mayor Levine Cava:

The Department of Economic Opportunity (Department) has reviewed the Miami-Dade County proposed comprehensive plan amendment (Amendment No. 21-02ESR), received on September 22, 2021, pursuant to the expedited state review process in section 163.3184(2)(3), Florida Statutes (F.S.). We have identified no comment related to adverse impacts to important state resources and facilities within the Department’s authorized scope of review.

We are, however, providing four technical assistance comments consistent with section 163.3168(3), F.S. The technical assistance comments will not form the basis of a challenge. They are offered either as suggestions which can strengthen the County’s comprehensive plan in order to foster a vibrant, healthy community or are technical in nature and designed to ensure consistency with the Community Planning Act in Chapter 163, Part II, F.S. The technical assistance comments are:

- **TA Comment 1) Military Compatibility:**

  In considering the implications of future development resulting from the revisions proposed within the amendment, the Department strongly encourages Miami-Dade County to coordinate with the Homestead Air Reserve Base (HARB) on all matters pertaining to compatibility with the HARB military installation. In addition, it is important to note the proposed amendment could result in further encroachment on HARB inconsistent with Section 163.3175(1), Florida Statute; therefore, pursuant to HARB’s letter dated October 18, 2021, it is recommended the proposed policy revisions be further revised to apply only to the subject property.

- **TA Comment 2) Internal Inconsistency:**

  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 Comprehensive Development Master Plan (CDMP) identifies the CHHA as being among the areas least suitable for urban development (Land Use Element page I-88 and I-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 more than 9 million square feet of non-residential development and up to 84 residential units (farm residences in Phase III of the development) predominately located within the CHHA. The County may want 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.

- **TA Comment 3) Agency Coordination:**

  The Department strongly encourages Miami-Dade County to coordinate with all commenting review agencies to address their concerns prior to the adoption of this amendment. The County is also encouraged to take into consideration the input of other local and tribal governments in this matter.

- **TA Comment 4) Orderly and Balanced Future Development:**

  The County’s amendment proposes to create exemptions for certain non-residential properties related to expansions of the Urban Development Boundary and increased intensities within the CHHA, as noted in the text revisions to Land Use Element Policy LU-8H and Coastal Management Element Policy CM-9A respectively. The County may want to further consider how these revised policies could be applied to additional properties throughout the County and if that will aid in achieving the vision and long-term development goals of its CDMP.

The County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment. In addition, the County is reminded that:

- **Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the County. If the County receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.**

- **The second public hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, must be held within 180 days of your receipt of agency comments or the amendment shall be deemed withdrawn unless extended by agreement with notice to the Department and any affected party that provided comment on the amendment pursuant to Section 163.3184(3)(c)1., F.S.**
The adopted amendment must be rendered to the Department. Under Section 163.3184(3)(c)2. and 4., F.S., the amendment effective date is 31 days after the Department notifies the County that the amendment package is complete or, if challenged, until it is found to be in compliance by the Department or the Administration Commission.

If you have any questions concerning this review, please contact Melissa Corbett, Planning Analyst, by telephone at (850) 717-8505 or by email at Melissa.Corbett@deo.myflorida.com.

Sincerely,

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/mc

Enclosure(s): Procedures for Adoption

cc: Lourdes M. Gomez, AICP, Regulatory and Economic Resources Director, Miami-Dade County
    Isabel Cosio Carballo, MPA, Executive Director, South Florida Regional Planning Council
March 7, 2023

Dennis A. Kerbel, Assistant County Attorney
Office of the County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, 27th Floor
Miami, Florida 33128-1993
dkerbel@miamidade.gov

RE: Miami-Dade County Ordinance 22-148

Dear Mr. Kerbel:

The State Land Planning Agency (“DEO”) is in receipt of your February 3, 2023 correspondence, in which you provided additional documentation regarding Miami-Dade County’s (“County”) Comprehensive Plan Amendment 22-07ESR (the “Amendment”). Thank you for the documentation and explanation of the County’s position, however, upon careful consideration of the information provided, DEO finds nothing which would prompt it to recede from or alter DEO’s letter of January 26, 2023, regarding the Amendment. As I mentioned in our January 30, 2023 phone call: in issuing its January 26, 2023 letter, DEO is simply applying section 163.3184, Florida Statutes (F.S.), to the circumstances at hand; DEO takes no position on the substance of the Amendment itself, other than as set forth in its renewed technical assistance comments.

With respect to the Expedited State Review (ESR) Process and the Amendment moving forward, the County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. As a reminder, DEO would also ask that the County please note the following requirements for amendments reviewed under the ESR process:

- Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the County. If the County receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.
- The County’s second public hearing, which shall be a hearing on whether to adopt the amendment, must be held within 180 days of your receipt of agency comments or the amendment shall be deemed withdrawn unless extended by agreement with notice to DEO and any affected party that provided comment on the amendment pursuant to Section 163.3184(3)(c)1., F.S.
- The adopted amendment must be rendered to DEO within 10 working days after the second public hearing pursuant to Section 163.3184(3)(c)2., F.S.
- Sections 163.3184(3)(c)2. and 4., F.S., provide that the amendment effective date is 31 days after DEO notifies the County that the amendment package is complete or, if challenged, until it is found to be in compliance by DEO or the Administration Commission.

If you have any questions or concerns, please feel free to contact me at (850) 245-7150 or brandon.white@deo.myflorida.com.

Regards,

/s/ Brandon W. White
Acting General Counsel
Florida Department of Economic Opportunity

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.