



BOARD OF COUNTY COMMISSIONERS

DATE: January 28, 2014

AGENDA ITEM NO. 14

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature

Subject:

Approval of an Interlocal Agreement with the City of St. Petersburg related to Ordinance 11-42, Properties of County-wide Importance, as outlined in Section 4 of the Ordinance.

Department:

County Administrator's Office / County Attorney's Office

Staff Member Responsible:

Mark S. Woodard, Assistant County Administrator
Jewel White, Senior Assistant County Attorney

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) CONSIDER THE APPROVAL OF AN INTERLOCAL AGREEMENT WITH THE CITY OF ST. PETERSBURG RESOLVING A DISPUTE INVOLVING THE ADOPTION OF COUNTY ORDINANCE 11-42 INVOLVING PROPERTIES OF COUNTYWIDE IMPORTANCE.

Summary Explanation/Background:

The attached Interlocal agreement is the culmination of almost two (2) years of negotiations with the City of St. Petersburg on their opposition to County Ordinance 11-42 regarding properties of countywide importance. The Ordinance was adopted by the Board in 2011 to clarify the County's charter powers as they relate to county-owned properties within municipal boundaries. The City objected and initiated the Chapter 164, FS (Florida Government Conflict Resolution Act) procedures in an effort to resolve the dispute. The objection was primarily based upon concerns related to the application of the Ordinance to the City's special area plans, community redevelopment areas, zoning categories and other land development regulations.

The interlocal agreement addresses the city's concerns, while protecting the county's interests. The Board previously approved an agreement with the City of Largo, pursuant to Chapter 164, to address that City's concern with the Ordinance as it related to the construction of the County's Public Safety Campus. The Ordinance contemplated a negotiated interlocal agreement as a vehicle to address matters of intergovernmental coordination; see Section 4.

The City Council approved the Agreement at their December 5, 2013 meeting, see attached. The item is now before the Board for consideration.

Fiscal Impact/Cost/Revenue Summary:

None.

Exhibits/Attachments Attached:

Interlocal Agreement
City of St. Petersburg - City Council Agenda Memo and Resolution – December 5, 2013

INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2014, by and between Pinellas County, a political subdivision of the State of Florida (hereinafter the "County"), and the City of St. Petersburg, a municipal corporation of the State of Florida (hereinafter the "City"). The County and the City may be collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, on August 23, 2011, the Board of County Commissioners ("BOCC") set a public hearing to be held by the County's Local Planning Agency ("LPA") for Ordinance No. 11-42 ("Ordinance"), related to properties the County deems to be of countywide importance ("Properties of Countywide Importance"); and

WHEREAS, Properties of Countywide Importance are defined by the County as county-owned parks, buildings and other properties developed and operated in furtherance of those special countywide powers enumerated in Section 1.4 of the Ordinance; and

WHEREAS, the County's stated purpose for the Ordinance is to preempt municipal regulation of development on Properties of Countywide Importance located within municipal boundaries to the extent specifically set forth in the Ordinance, reserving to the County authority to review and issue any permits or approvals for development, while at the same time providing for intergovernmental coordination with the appropriate municipality; and

WHEREAS, the City does not concur with the County's Ordinance, including the interpretation of County Charter Section 2.04 which is stated in section 1.4 of the Ordinance, or the Ordinance's stated purpose to preempt municipal regulation of development on Properties of Countywide Importance located within municipal boundaries, or that the Ordinance provides for

the County to have the authority to review and issue any permits or approvals for said development; and

WHEREAS, the County currently has plans to utilize the Sod Farm property, as described in paragraph 18, for a solid waste landfill that would, if fully developed as planned, and over the objections and existing land development regulations of the City, be 150 feet in height; and

WHEREAS, based upon current utilization projections, the Bridgeway Acres landfill has sufficient capacity to accept waste permitted to be received at a Class 1 Landfill through 2054, and if the Sod Farm is developed for landfill uses in accordance with current plans, that capacity will extend through 2105; and

WHEREAS, new and emerging technologies and best practices in the solid waste disposal industry may lessen reliance on landfill operations in the future; and

WHEREAS, the County has no present intent to develop additional landfills within the city beyond those either currently in operation (Bridgeway Acres) or currently planned for future use (Sod Farm); and

WHEREAS, the City first learned of the Ordinance on August 23, 2011, and subsequently sent a letter to the Chairman of the County's LPA outlining its concerns and objections with the proposal prior to the LPA's September 8, 2011, public hearing, attached hereto as Exhibit A; and

WHEREAS, the LPA voted to recommend approval of the Ordinance to the BOCC; and

WHEREAS, the City provided additional documentation that set forth its concerns and objections related to the Ordinance, attached hereto as Exhibit B; and

WHEREAS, at the two public hearings on the Ordinance before the BOCC, staff for the City appeared and expressed the City's concerns with and opposition to the Ordinance; and

WHEREAS, the County passed the Ordinance after the second public hearing on October 11, 2011, attached hereto as Exhibit C; and

WHEREAS, on November 21, 2011, the City Council of the City of St. Petersburg passed Resolution No. 2011-497, attached hereto as Exhibit D, stating its objections to the Ordinance and, initiating the conflict resolution proceedings provided for in Section 164.1052, Florida Statutes, as to the conflict set forth therein; and

WHEREAS, staff of the County and City have undertaken the conflict assessment phase of ch. 164 proceedings, meeting several times over the course of many months to discuss the issues raised in Resolution No. 2011-497, which has resulted in this Interlocal Agreement ("Agreement"); and

WHEREAS, the Parties are participating in good faith to achieve this Agreement as to the Ordinance, subject to the terms and conditions contained herein, with the intent to preserve the legal status quo; and

WHEREAS, it is the Parties' intent that such participation in or execution of the Agreement does not equate to and shall not be interpreted at any time: 1) as a waiver or release of any or all claims or defenses as to the validity of the Ordinance; 2) that the City agrees in any manner that the Ordinance is a valid exercise of County authority; 3) that the County agrees in any way that the Ordinance is not a valid exercise of County Charter authority; 4) that the City has acquiesced to the Ordinance in any manner by entering into this Agreement; or 5) that the County has relinquished its right to develop Properties of Countywide Importance pursuant to the Ordinance, subject to the terms of this Agreement; and

WHEREAS, the Parties expressly reserve their respective rights to pursue any claims in any manner provided by law and to seek any available legal remedies as to the Ordinance at any time; and

WHEREAS, the County and City do hereby have the express authority to enter into this Agreement in order to make the most efficient use of their powers by cooperating in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties agree to enter into this Agreement, pursuant to section 163.01, Florida Statutes, and section 3 of the Ordinance which provides for the Parties to enter into an interlocal agreement, to satisfy the Parties' respective obligations under ch. 164, Florida Statutes.

NOW, THEREFORE, in consideration of the mutual covenants to be performed by the respective parties, the Parties agree as follows:

1. The above recitals are true and correct and incorporated herein.
2. **Definitions.** The following terms or phrases shall have the definition ascribed to them herein:
 - a. "Development" shall have the meaning ascribed to it in the Ordinance.
 - b. "LDR" shall refer to land development regulations.
 - c. "Ordinance" shall mean Pinellas County Ordinance No. 11-42.
 - d. "Project" shall refer to the development, redevelopment or renovation of any Properties of Countywide Importance located within the City's municipal boundaries.
 - e. "Properties of Countywide Importance" shall have the meaning ascribed in the Ordinance.

f. “Usual Charge” means the standard fee for all similarly situated users charged by the City for a particular service as established by resolution, ordinance, or other formal administrative action of the City.

3. **Community Redevelopment Areas.** The Parties recognize that the City, acting as the Community Redevelopment Agency, has adopted, pursuant to delegation from the County of authority under part III, chapter 163, Florida Statutes, the following redevelopment areas:

- a. Intown Community Redevelopment Area
- b. Intown West Community Redevelopment Area
- c. Dome Industrial Park Community Redevelopment Area
- d. Dome Industrial Park Pilot Project Community Redevelopment Area
- e. Bayboro Harbor Community Redevelopment Area
- f. Tangerine Avenue Community Redevelopment Area

These Community Redevelopment Areas are depicted on a map attached hereto as Exhibit E. Any Project located within the boundaries of these current community redevelopment areas shall be exempt from the terms of the Ordinance, as long as this interlocal agreement is in full force and effect. Nothing herein shall affect the County’s authority as a charter county under § 163.410, Florida Statutes.

4. **Developments of Regional Impact.** The Parties recognize that the following Developments of Regional Impact (DRI) have been approved with the boundaries of the City:

- a. Gateway Areawide Development of Regional Impact (Ord. No. 1142-F), as amended.
- b. Intown Areawide Development of Regional Impact (Ord. No. 1072-F), as amended.

These DRI's are depicted on a map attached hereto as Exhibit F. Except as specifically set forth in paragraph 18 of this Agreement, any Project located within the boundaries of these current DRIs shall be exempt from the terms of the Ordinance as long as this interlocal agreement is in full force and effect and shall be controlled by the terms of the applicable DRI.

5. **Special Area Plans & Activity Centers.** The Parties recognize that the City has adopted the Vision 2020 Special Area Plan (SAP) and the following Comprehensive Plan/Future Land Use Overlays entitled "Activity Center" of which there is no equivalent category in the County's LDRs. The Parties recognize that the following Activity Centers exist within the boundaries of the City:

- a. Gateway Activity Center
- b. Tyrone Activity Center
- c. Intown Activity Center
- d. Central Plaza Activity Center

These SAP's and Activity Centers are depicted on a map attached hereto as Exhibit G. Except as specifically set forth in paragraph 18 of this Agreement, any Project located within the boundaries of the current Vision 2020 SAP and/or these current Activity Centers shall be exempt from the terms of the Ordinance as long as this interlocal agreement is in full force and effect.

6. **Compliance with Federal and State Requirements.** Both the County and the City are subject to various regulations imposed by Federal and State law, including but not limited to, FEMA's flood plain management requirements and water quality and pollution issues governed by the parties' respective NPDES permits (FL000005 and FL000007), as well as TMDLs and nutrient reduction requirements. When implementing County LDRs on a Project, the County shall coordinate with the City to ensure that County action will not prevent the City from

meeting its legal obligations, including being able to maintain compliance with these permits and/or regulations. Such coordination may include implementation of the relevant City LDRs. In no event shall action taken by the County to develop a project or implement its own LDRs render the City non-compliant with the permits and/or regulations referenced herein.

7. **Application of Zoning Categories or LDRs.** The County acknowledges that the County zoning categories and LDRs are not identical to the City's zoning categories and LDRs. To the extent that the County reviews and issues permits utilizing the County's zoning categories or LDRs for any development located on Properties of Countywide Importance, the County shall ensure that no action it takes will render the City inconsistent with its Comprehensive Plan, adopted pursuant to ch. 163, Florida Statutes, which may include implementation of the relevant City LDRs. In no event shall action taken by the County to develop a Project or implement its zoning categories or LDRs render the City non-compliant with the Florida Statutes, including ch. 163, as referenced herein.

8. **Fire Plan Review and Inspections.** The Parties agree that the City's Fire Marshall shall enforce the terms of and ensure compliance with the Florida Fire Building Code, that the City will conduct fire plan review and inspections associated with any Project and the County will pay the City the City's usual charge(s) for fire plan review and inspections or any other requirements associated with the Florida Fire Building Code.

9. **Florida Building Code.** The Parties recognize and agree that the County will act as the local enforcement agency, as that term is defined in s. 553.71(5), Florida Statutes, for Projects that require review and approval under the Florida Building Code (FBC), and will issue all applicable permits and certificates of occupancy. The City's building official shall have no

liability for ensuring compliance with or enforcing the terms of the FBC, as set forth in Paragraph 10.

10. **Liability.** In acting as the local enforcement agency for those Projects requiring review and approval under the FBC, as referenced in paragraph 9, as well as acting as the local government when applying the County's Comprehensive Plan and LDRs and federal and state law when developing a Project pursuant to the Ordinance, the County voluntarily assumes all risks of accidents, injury and damage to its person and property and hereby releases and discharges the City and its employees, agents, officers, elected and appointed officials, and volunteers (collectively, "Indemnified Parties") from every claim, liability, and demand of any kind. Further, the County shall defend at its expense, pay on behalf of, hold harmless and indemnify the Indemnified Parties from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, which Claims are alleged to have arisen out of or in connection with, in whole or in part, the County performing the review and approval of projects under the FBC and the County's Comprehensive Plan and LDRs and federal and state law in the course of developing a Project pursuant to the Ordinance, notwithstanding that such Claims were alleged to have been caused by, in whole or in part, the negligence of any of the Indemnified Parties. This indemnification shall not be construed as a waiver of the County's sovereign immunity under Florida law including the damage caps contained therein, and shall be interpreted as limited to such liabilities for which the County could be held liable pursuant to 768.28, Florida Statutes and under the law interpreting the limited waiver of sovereign immunity.

11. **City Services.** To the extent any Project requires the delivery of municipal water or sewer services that will require a new physical connection to the municipal system, the County

shall review the new connection with the City, at the time of the permitting process and prior to the start of construction, to ensure consistency with the municipal system and infrastructure. The County will pay the City's usual charge for such connection, including any usual charge for review and inspection fees. If a County property receives City services, including stormwater utility and sanitation services, the County will pay the usual charge associated with such service(s).

12. **Public Notice.** In order to provide the greatest opportunity for citizen input on Projects, the County will provide notice to the public pursuant to the notice provisions contained in the City's LDRs, unless the County LDRs provide for greater public notification (i.e., a larger radius for notices sent to individual property owners via first class mail) in which case the County's LDRs will prevail.

13. **Notices.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

City:

City Administrator
175 5th Street North
St. Petersburg, FL 33701

Pinellas County:

County Administrator
315 Court Street
Clearwater, FL 33756

Copy to:

Legal Department
P. O. Box 2842
St. Petersburg, FL 33731-2842

County Attorney
315 Court Street
Clearwater, FL 33756

14. **Right-of-way vacations and easements.** To the extent a vacation of a City right-of-way or easement is required for a Project, the County will adhere to the City's process for vacations and pay the City's usual charge for such vacation.

15. **Transportation Impact Fees.** The City and County recognize that, pursuant to s. 150-45(a)(4), Pinellas County Land Development Code, the County is exempt from payment of transportation impact fees for projects involving the construction of facilities used primarily for traditional government uses. To the extent this exemption does not apply, the County agrees to pay the fee required by its countywide transportation impact fee ordinance and distribute the proceeds accordingly.

16. **No Preemption.** The Parties recognize and agree that the Ordinance does not preempt any City regulation that is not related to Development, including but not limited to, roadside solicitation, activities occurring on the Pinellas Trail, or the noise ordinance.

17. **Off-premise Signs.** The County agrees it will not construct any off-premise signs (i.e. billboards) on any Properties of Countywide Importance, regardless of whether County LDRs would allow for the placement of such signage.

18. **Solid Waste Disposal.** The County owned property commonly known as the Toytown Landfill ("Toytown") and more specifically described in the Development Agreement recorded in the Official Records of Pinellas County at Book 1697, Pages 2044-2066, is subject to the terms and conditions of that Development Agreement for the duration of the term set forth therein at paragraph 4, and the Ordinance does not modify or amend the terms and conditions of that Agreement, which may only be amended by the mutual consent of the parties thereto.

Toytown and the County owned property commonly known as the Sod Farm, which is depicted on map attached hereto as Exhibit H and is approximately bounded by 28th Street North

to the west, I-275 to the east, County Road 296 to the north, and 102nd Avenue North to the south, collectively referred to as the “Solid Waste Properties” are located within the Gateway Areawide DRI referenced in paragraph 4 and the Gateway Activity Center referenced in paragraph 5. The exemption from the Ordinance referenced in paragraphs 4 and 5 shall not extend to the Solid Waste Properties.

19. **Application of Ordinance.** The Parties specifically acknowledge and agree that the Ordinance does not apply to stormwater drainage facilities or public rights-of-way.

20. **Legal Remedies.** Neither the execution of this Agreement nor any term or condition contained herein shall be interpreted or construed at any time as a waiver or release by the City or County of any claims, causes of action or defenses of any nature related to the validity of the Ordinance. Without limiting the generality of the foregoing, the City maintains its right to pursue any and all causes of action in any manner provided by law or equity and to seek all available legal and equitable remedies, and the County may defend against such causes of action and any requested remedies. The Parties agree that the execution of this Agreement shall toll the applicable statute of limitations or other affirmative defenses that would bar a lawsuit based upon the passage of time, related to any cause of action the City may bring specifically related to development pursuant to the Ordinance of any Project located on the Solid Waste Properties, as that term is defined in paragraph 18, that is not governed by the Toytown Development Agreement until such time as notice is given by the County to the City, as required by section 4 of the Ordinance, regarding a proposed Project. This Agreement shall not be interpreted or construed as an admission by the City or the County that the Ordinance is or is not a valid exercise of County authority or that the City or County acquiesced as to the validity of the Ordinance in any manner by entering into this Agreement. The Parties expressly reserve their

respective rights to challenge and defend the validity of the Ordinance at any time. If the City exercises its right to challenge the validity of the Ordinance, then the County may unilaterally terminate this Agreement by providing five (5) days written notice to the City. If the County exercises its right to develop Properties of Countywide Importance contrary to the terms of this Agreement, then the City may unilaterally terminate this Agreement by providing five (5) days written notice to the City.

21. **Third-Parties.** This Agreement is intended for the benefit of the Parties only and is not intended for the benefit of any third parties.

22. **Modification.** If the County or the City desires to modify this Agreement, either may do so only with the written consent of the other party. Such modification must be in writing and executed by both Parties.

23. **Captions.** Captions are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

24. **Existing Agreements.** This Agreement is not intended to modify or amend the terms and conditions of any other existing agreements between the Parties.

25. **Survival.** The obligations of the County arising during or attributable to the period prior to expiration or earlier termination of this Agreement as to Paragraphs 10 and 20 of this Agreement, shall survive such expiration or earlier termination.

26. **Term.** As required in Section 163.01(11), Florida Statutes, this Agreement shall be filed with the Clerk of the Circuit Court of Pinellas County, Florida after the execution by the Parties, and shall become effective upon the date of filing. This Agreement shall continue in force for a period of 10 years, with three five (5) year renewal periods upon mutual written agreement of the

Parties. Either Party may terminate this Agreement for convenience upon thirty (30) days written notice to the other Party.

27. **Periodic Reviews.** The Parties agree to a periodic review, every 5 years, of the Agreement. In the event of the creation, expansion, modification, change to or expiration of a Development of Regional Impact (DRI), Special Area Plan (SAP), Community Redevelopment Area (CRA), or development agreement, including the Toytown Development Agreement, where one or more of the Properties of Countywide Importance is located, and prior to next the periodic review, the Parties agree to meet to discuss such activity prior to any development occurring on said Properties of Countywide Importance. In the event the County acquires fee ownership in the future of a property deemed by the County to be of countywide importance, that is not one of the Properties of Countywide Importance currently addressed by this Agreement and prior to the next periodic review, the Parties agree to meet to discuss said property prior to any development occurring.

IN WITNESSETH WHEREOF, the undersigned have hereto affixed their hands and seals
the day and year first above written.

CITY OF ST. PETERSBURG

PINELLAS COUNTY

Pinellas County, Florida, by and through
its Board of County Commissioners

Mayor By: _____
Chairman

ATTEST:

ATTEST:
KEN BURKE, CLERK

City Clerk By: _____
Deputy Clerk

APPROVED AS TO FORM AND
CONTENT

APPROVED AS TO FORM

City Attorney (Designee)



Office of County Attorney

EXHIBITS

- Exhibit A - Letter from City to LPA Chair re: concerns with ordinance (Sept. 2011) (City)
- Exhibit B - Letters from City with additional concerns (City)
- Exhibit C - Ordinance (County)
- Exhibit D - City Resolution No. 2011-497 (City)
- Exhibit E - Map of CRA's (City)
- Exhibit F - Map of DRI's (City)
- Exhibit G - Map of SAP's and activity centers (City)
- Exhibit H - Map of Solid Waste properties (City)



CITY OF ST. PETERSBURG

CITY OF ST. PETERSBURG, FLORIDA

Office of the Mayor

BILL FOSTER, Mayor

September 7, 2011

Randy Wedding, Chair, and Members of the
Pinellas County Local Planning Agency (LPA)

Re: Proposed Ordinance amending the Pinellas County Land Development Code
pertaining to Properties of Countywide Importance

Dear Chair and Members:

It has come to our attention that Item LPA 18-9-11, which is a proposed ordinance for amending the Pinellas County Land Development Code regarding county owned properties deemed to be of "Countywide Importance," will be before you on September 8, 2011 for consideration. This ordinance proposes to preempt all cities' ordinances as they apply to county owned property.

The City of St. Petersburg has a number of concerns with the proposed ordinance and the impact it will have on activities and development within the City. Of note is the fact that while the ordinance purports to apply only to certain county owned properties, if adopted it would likely eventually apply to all county owned properties, including those that are leased to for profit entities which compete for business with other for profit entities within each city.

Of initial concern is that the City has been provided with very little time to consider and study this proposal. The City only learned of this ordinance when it went before the Board of County Commissioners for the purpose of setting a public hearing, on August 23, 2011. The cities were provided no notice and no opportunity to provide feedback prior to the ordinance appearing on the agenda before the Board of County Commissioners and being transmitted to the LPA for action.

Second, from our initial review, exemption from all City ordinances including land development regulations would result in inconsistent or undesirable impacts within the City on those County owned properties. For example, properties, including the Pinellas Trail, would no longer be subject to City ordinances that govern sleeping in public or panhandling. Therefore, individuals who were prohibited from sleeping or panhandling in public in every other area of the City could now do so on the Pinellas Trail itself, adjacent to homes and businesses. The ordinance proposes to exempt certain county roads from municipal ordinances. In St. Petersburg this would mean that the highly successful prohibition against street solicitations to vehicles would not be enforceable on county roads. The St. Petersburg City Council has recently decided not to pass an ordinance allowing digital billboards within the City. However, the County allows digital billboards, so these could be placed on county properties in the City, for example on top of the

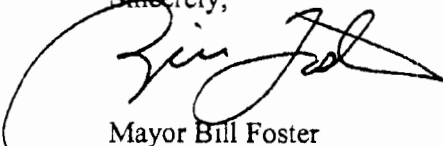
Suwanee Hotel. This is contrary to the direction that the City Council determined to be appropriate development in St. Petersburg. We have not yet been able to quantify the impact on many county owned properties in St. Petersburg, including properties such as Tropicana Field, the old Toytown landfill east of I-275, and height limitations for the incinerator landfill west of I-275.

Third, since the City and County land development regulations are not identical, we have concerns that the use of County land development regulations will result in incompatible development or fail to place appropriate restrictions on development, which would be inconsistent with the land use and zoning of surrounding, impacted properties in the City. This ordinance would also exempt county owned properties from vital redevelopment plans and strategies in St. Petersburg, including the City's Intown Redevelopment Plan, the Comprehensive Plan, Gateway Areawide Development of Regional Impact Development Order, and the Intown Development of Regional Impact Development Order. These Plans, and the Development Orders, are enacted pursuant to State law, therefore exemptions from any of these may create State law issues.

The City is requesting that this item, which has great significance to the City and other municipalities, be denied or delayed to give local governments enough time to review the proposed ordinance, provide comments to, and have a dialogue concerning this issue with the County. Of great importance is the question of whether the County Charter even provides the authority for this preemption of all municipal ordinances. As noted in the materials provide to the LPA, the Charter was approved in 1980 and there is no deadline within the Charter itself to consider such a proposed ordinance. Quite frankly, there is serious concern as to the impacts and unintended consequences that this ordinance may create for all municipalities.

We respectfully request that this ordinance be denied or delayed until the City of St. Petersburg and all other cities have the opportunity to provide comments to, and enter into discussions with, the County on this matter.

Sincerely,



Mayor Bill Foster



Mark A. Winn
Chief Assistant City Attorney

Cc: Brian Smith



CITY OF ST. PETERSBURG
Office of the Mayor

Bill Foster, Mayor

October 25, 2011

Susan Latvala, Chair
Pinellas County Board of County Commissioners
315 Court Street
Clearwater, FL 33756

Re: Countywide Preemption Ordinance

Dear Chair Latvala:

Per our telephone conversation on October 21, 2011, this will acknowledge my continued reservations and concerns with the proposed municipal preemption ordinance. While I appreciate the modifications made thus far from the original language, there remain a few points of contention which I believe warrant further consideration.

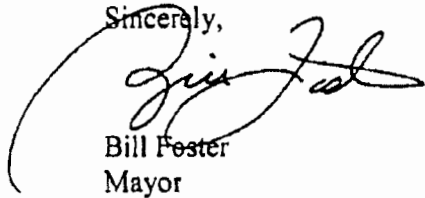
Of greatest concern to me is the County's desire to preempt municipal comprehensive plans and land development regulations (LDRs), the plans and regulations that establish the character of each community. In St. Petersburg our Comprehensive Plan includes a Vision Element that was adopted after a two year long community driven visioning process. Hundreds of citizens participated in the creation of Vision 2020. Our entire set of land development regulations were subsequently readopted in 2007 to ensure that the values and principles of Vision 2020 are implemented. Vision 2020 and the City's Land Development Regulations are both award winning planning tools that serve this City well. I cannot accept having to surrender County owned enclaves of land, which in St. Petersburg is hundreds of acres, from the system of regulations, standards and processes that were put into place by this community to ensure proper and compatible development. Further, I cannot accept surrendering the opportunities for community participation in the development process that the City's LDRs assure our citizens.

As for project savings, I understand the County's desire for cost reductions, as is every government in this current economic climate, and would be happy to enter into discussions with the County to address those issues.

Those discussions could result in the City agreeing to delegate its authority to perform building code and development regulation permitting authority for certain County properties located within the City, subject to Federal, State and City laws. Alternatively the City could charge fees that would not exceed those charged by the County for like services. With the latter option the County would be in a cost neutral position and would not have to learn the City's regulatory system or process.

Please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Foster", with a large, sweeping flourish extending from the left side of the signature.

Bill Foster
Mayor

cc: City Councilmembers
Tish Elston, City Administrator
Mark Winn, Chief Assistant City Attorney

**Office of the City Attorney**

City of St. Petersburg
One Fourth Street North
St. Petersburg, FL 33701
P.O. Box 2842
St. Petersburg, FL 33731-2842
Telephone: 727-893-7401
Fax: 727-892-5262

October 21, 2011

Via: Facsimile: 727-464-4147

Jewel White
Assistant County Attorney
315 Court Street
Clearwater, FL 33756

Re: Countywide Preemption Ordinance

Dear Ms. White

I appreciate you speaking with me several times concerning this ordinance that attempts to exempt certain County properties from municipal ordinances. I wanted to convey the substance of those discussions, and the City's suggestions, to you in writing so that you can provide them to your Commission members prior to the meeting.

The City understands the County's concerns with saving costs, as every government is in the current economic climate, and would be happy to enter into discussions with the County to address those issues. Those discussions could result in the City agreeing to delegate its authority to perform building code and development regulation permitting authority for certain County properties located within the City, subject to Federal, State and City laws. Alternatively the City could charge fees that would not exceed those charged by the County for like services. With the latter option the County would be in a cost neutral position and would not have to learn the City's regulatory system or process.

The City contends that the County does not have the legal authority to unilaterally assume any regulatory control of County properties within the City's boundaries or exempt them from the City's ordinances. The City believes that a County Charter amendment is legally required for the County to assume building code and development permitting authority over County properties within the City's boundaries. If the County's desire is to transfer the powers of the City to perform building plan reviews, issue building permits, provide inspection services, and to exempt the County from the City's land development regulations and permitting process for the County's own development projects within the City, then an amendment, approved by referendum, to the County Charter is necessary.

In addition to the City's concern that the County does not have the legal authority to exempt itself from City ordinances, there are substantial practical concerns with the proposed ordinance. Several of those concerns are as follows:

First, the ordinance does not identify a conflict between any City ordinance and any County ordinance which relates to the authority of the County to provide one of the services delegated to it in the County Charter. Since there is no City ordinance that prohibits or limits the County from performing such services, there can be no conflict with a County ordinance and therefore no preemption of any City ordinance. If there were such a conflict, the County Charter provides that

Jewel White
Assistant County Attorney
October 21, 2011

the County's ordinance will prevail and therefore no additional ordinance is necessary. No such conflict has been identified so the City is completely unaware of what ordinances might be preempted by the County Charter.

Secondly, the ordinance does not identify which properties the County attempts to exempt and therefore the City has no idea which properties this ordinance might apply to.

Third, the ordinance talks about "development" however the proposed definition refers to State law definitions which are extremely broad and have little clear applicability to any City ordinances and, in fact, clearly does not apply to permitting powers and the imposition of fees for services performed.

Fourth, the ordinance goes well beyond the intent of the Charter in establishing County control of certain services. For example, as it relates to solid waste disposal, the clear intent of the Charter is to prevent municipalities from developing and operating their own solid waste disposal facilities in conflict with the County's operation of their solid waste disposal facilities. The intent is not to preempt local land development regulations.

Lastly, the ordinance does not address how the County will comply with State and Federal laws which the City is mandated to assure compliance with, nor how the County will comply with City ordinances relating to furnishing City services to County properties. The City will still require the County to go through those permitting processes.

While the City strongly opposes this ordinance (as further evidenced by the attached City Council Resolution) the City would be happy to discuss an interlocal agreement concerning these matters.

In sum, we believe that the County does not have the authority to adopt this ordinance and instead should discuss this matter with the cities before taking the extreme and unusual action of attempting to exempt itself from City regulations.

Very truly yours,



Mark A. Winn
Chief Assistant City Attorney

c: Mayor Bill Foster
City Councilmembers

Resolution No. 2011-444

A RESOLUTION OF THE CITY COUNCIL EXPRESSING STRONG OPPOSITION TO THE COUNTY'S PROPOSED ORDINANCE ATTEMPTING TO EXEMPT CERTAIN COUNTY OWNED PROPERTIES LOCATED IN MUNICIPALITIES FROM CERTAIN MUNICIPAL REGULATIONS WHICH APPLY TO THEM; REQUESTING THAT THE COUNTY COMMISSION REJECT THIS PROPOSED ORDINANCE; RECOMMENDING AN ALTERNATIVE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Pinellas County has proposed an ordinance, the title of which begins 'AN ORDINANCE OF THE COUNTY OF PINELLAS IMPLEMENTING COUNTYWIDE AUTHORITY TO OPERATE, MAINTAIN, DEVELOP AND CONTROL CERTAIN COUNTY PROPERTIES.....'; and

WHEREAS, this ordinance exempts certain properties owned and operated by Pinellas County from the effect of the municipality's ordinances related to building permitting and land development regulations when they are located within a municipality (collectively hereinafter simply referred to as 'county properties'); and

WHEREAS, the concerns expressed by the County as the reason for the need for this ordinance could easily be addressed in an interlocal agreement; and

WHEREAS, entering into interlocal agreements with municipalities would eliminate the conflict between municipalities and the County on this issue and address all the concerns of all parties on this issue which has been created by the County's processing of this ordinance; and

WHEREAS, the ordinance does not clearly identify the county properties to which it applies nor does it clearly identify the municipal ordinances which it seeks to exempt the County from; and

WHEREAS, the City first learned of the proposal when it went before the Board of County Commissioners (BOCC) on August 23, 2011 for the purpose of setting a public hearing to be held by the County's Local Planning Agency (LPA); and

WHEREAS, none of the cities in Pinellas County were provided with the opportunity to review, comment or consider the proposal and the County provided no formal outreach for review and input by the cities; and

WHEREAS, at the first reading and public hearing on September 27 the BOCC provided a new draft of the ordinance which attempted to address certain concerns that had been expressed by municipalities; and

WHEREAS, at the first reading and public hearing on September 27 the BOCC rescheduled the second reading and public hearing from October 11 to October 25 to provide

additional time for review and comment; and

WHEREAS, comments have been provided to the County and another draft of the ordinance has been provided, however, none of the City's suggestions were accepted and therefore the proposed ordinance still creates both legal and practical concerns; and

WHEREAS, municipal ordinances take into account the wishes of the citizens of each city and reflect the character of the municipality that the citizens desire; and

WHEREAS, the County's LDRs do not reflect the nuances of each city's individual situation nor the needs of each city concerning redevelopment, maintenance, capital improvements, or the context of each property within the urban fabric of each city; and

WHEREAS, the City firmly believes that it was not the intent of the County Charter to exempt county properties from all local ordinances but only allows that exemption if there is a direct conflict that prevents the County from performing the specific service set forth in the County Charter and that neither the building permitting nor the land development permitting processes conflict with the County's ability to perform the services set forth in the County Charter; and

WHEREAS, the City contends that the County does not have the legal authority to unilaterally assume regulatory control of county properties within municipal boundaries and exempt them from municipal regulations; and

WHEREAS, given the intended consequences described therein and other unintended and unidentified consequences, the City believes that a County Charter amendment is legally required for the County to assume the regulatory authority over its properties within municipal boundaries and that such amendment would require countywide referendum approval; and

WHEREAS, the City believes that transferring building permitting and land development permitting powers of the City is a clear violation of the State Constitution and that a County Charter amendment is constitutionally required to transfer these powers from the cities to the County and that such amendment would require countywide referendum approval and referendum approval in each city; and

WHEREAS, the County's attempt to exempt county properties from all local permitting processes is not good public policy and in fact does not exempt county properties from many local permitting requirements, instead it creates at least two processes that County permitting will have to follow in each city; and

WHEREAS, the City is obligated by Federal and State law to assure that certain requirements are met; and

WHEREAS, the County will have to pay all fees and costs associated with the additional reviews required by Federal, State and City ordinances that the County cannot exempt themselves from; and

WHEREAS, there are requirements and permitting processes that the County will have

to comply with prior to being able to connect to any City services (potable water, sewer, reclaimed water, stormwater system, etc.) or rights of way (streets and sidewalks) thereby creating additional review processes and costs for the County; and

WHEREAS, county properties would not be exempt from concurrency review for City services which will create an additional review process and cost for the County; and

WHEREAS, county properties within the City arguably may be exempt from the Comprehensive Plan but may not be exempt from the seven redevelopment plans (Intown, Intown West, Bayboro Harbor, TACRA, DIP Pilot Project, DIP, 16th Street South) thereby creating an additional review process and cost for the County; and

WHEREAS, county properties would not be exempt from the three developments of regional impact (Carillon, Gateway Areawide and Intown Areawide) thereby creating an additional review process and cost for the County; and

WHEREAS, the exemption would not extend to state and federal regulations that are implemented by the City through land development regulations and other ordinances, including FEMA's floodplain management requirements and the NPDES program which, among other things, addresses TMDL and other Bay area water pollution issues, thereby creating an additional review process and cost for the County; and

WHEREAS, the City's LDRs will not apply to county properties including regulating the permitted uses of land, including special exception uses, and overlays, including historic preservation, development standards including landscaping, set-backs, parking and building height, signage, etc.; and

WHEREAS, the County owns a significant number of properties that are located in downtown core of the City which are vital to the redevelopment of the downtown and the County has no comparable LDRs for development in a downtown core area; and

WHEREAS, the development of county properties would occur without the protections for the public which are provided by the City's development review processes, including notification to the public, local public hearings, and consideration of the impacts on surrounding properties in the City; and

WHEREAS, while the ordinance currently applies only to certain county properties (properties of "countywide importance"), if adopted it would set a precedent that could extend to all county properties, including those that are leased to for profit entities which compete for business with other for profit entities; and

WHEREAS, in effect, the proposed ordinance creates "enclaves" of county properties that are not subject to certain municipal ordinances in contravention of State laws which recommend the reduction of enclaves and establishes a precedent for the attempted future exemption from other municipal ordinances; and

WHEREAS, this ordinance is similar to a de-annexation action in that will eliminate the every cities' regulatory authority to enforce the building code and land development regulations

and certain other regulations in the new county 'enclave' and establishes a precedent for the attempted future exemption from other municipal ordinances; and

WHEREAS, the County owns many properties within the City that are used for a variety of functions, some of the larger properties include Tropicana Field and its surrounding parking areas, the closed Toytown landfill and the current landfill associated with the County's incinerator and even though some of these properties are arguably not subject to this ordinance, it establishes a precedent for the attempted future exemption of these other properties from City ordinances; and

WHEREAS, Pinellas County owns many public street rights-of-way and stormwater drainage facilities/easements within the City which the County could attempt to exempt from municipal ordinances; and

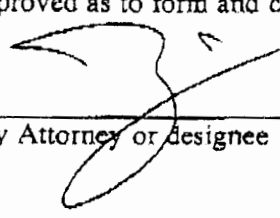
WHEREAS, even though some county properties are not subject to this ordinance, it establishes a precedent for the attempted future exemption of these other properties from municipal ordinances and a precedent for the exemption from many other local ordinances, in addition to the LDRs, the exemption could include rights-of-way, roads, and drainage facilities/easements, and could exempt them from all of the City's ordinances which could include the highly successful prohibition against street solicitations to vehicles on county roads, panhandling and sleeping in public ordinances on any county property including the Pinellas Trail and any county park; and

WHEREAS, off-site impacts of development, including the Toytown Mixed Use Development Project which could allow millions of square feet of development, in the future could be permitted without providing the City with the ability to address the off-site impacts which would include major transportation improvements to accommodate the substantially increased traffic; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of St Petersburg, that the City Council strongly opposes the adoption of an ordinance that exempts any county properties from any municipal ordinances and requests that the County Commission reject this ordinance and instead initiate discussions with cities to establish interlocal agreements that will address both the cities' and the county's concerns in a fair and equitable manner.

This resolution shall become effective immediately upon adoption.

Approved as to form and content:



City Attorney or Designee

Exhibit C

ORDINANCE NO. 11-42

AN ORDINANCE OF THE COUNTY OF PINELLAS IMPLEMENTING COUNTYWIDE AUTHORITY TO DEVELOP AND OPERATE CERTAIN COUNTY PROPERTIES DENOMINATED AS PROPERTIES OF COUNTYWIDE IMPORTANCE; PROVIDING LEGISLATIVE FINDINGS; DESIGNATING PROPERTIES OF COUNTYWIDE IMPORTANCE; PROVIDING FOR COUNTY REGULATION OF DEVELOPMENT; PROVIDING FOR INTERGOVERNMENTAL COORDINATION; PROVIDING FOR AREAS EMBRACED; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THE ORDINANCE AT PUBLIC HEARING AND WITH RESPONSIBLE AUTHORITIES

WHEREAS, "Properties of Countywide Importance" as used herein refers to county-owned properties, or properties affiliated with county-owned properties, that contain facilities that have a countywide benefit and are operated under the charter powers of the County; and

WHEREAS, the operation, regulation, management and protection of Properties of Countywide Importance is best achieved at the county level to ensure consistency among such properties and should not be constrained by varying municipal regulations or fees.

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Pinellas County:

SECTION 1. Legislative Findings

1.1 The Florida Constitution, Article VIII, Section 1(g) provides that the charter of charter counties "shall provide which shall prevail in the event of conflict between county and municipal ordinances"; and

1.2 Section 2.04 of the Pinellas County Charter, s. 1, as adopted by the Florida Legislature and approved by a vote of the Pinellas County electorate on October 7, 1980, as amended ("Charter"), provides for all special and necessary powers of the County to provide certain enumerated services and regulatory authority; and

1.3 Section 2.04 of the Charter provides, "when directly concerned with the furnishing of the services and regulatory authority [in certain specifically enumerated areas], county ordinances shall prevail over municipal ordinances when in conflict"; and

1.4 Section 2.04 of the Charter provides for countywide control over the development and operation of county owned facilities and properties that relate to the provision of the following governmental services and regulatory authority:

- (a) Development and operation of 911 emergency communication system
- (b) Development and operation of solid waste disposal facilities, exclusive of municipal collection systems.

- (c) Development and operation of regional sewage treatment facilities in accordance with federal law, state law, and existing or future interlocal agreements, exclusive of municipal sewage systems.
- (d) Acquisition, development and control of county-owned parks, buildings, and other county-owned property.
- (e) Development and operation of public health or welfare services or facilities in Pinellas County.
- (f) Operation, development and control of the St. Petersburg-Clearwater International Airport.
- (g) Implementation of animal control regulations and programs.
- (h) Development and implementation of civil preparedness programs.
- (i) Production and distribution of water, exclusive of municipal water systems and in accordance with existing and future interlocal agreements.
- (j) All coordination and delivery of municipal services in the unincorporated areas of the county.

1.5 The Local Government Comprehensive Planning and Land Development Regulation Act ("Act"), specifically Section 163.3171, Florida Statutes, reserves to charter counties authority for planning and land development regulation to the extent provided for in the county charter; and

1.6 In order to limit any disruptive effects of a County exercise of this existing charter authority, the County herein declares its policy in regard to those properties of countywide importance it wishes to continue preemptively regulating and leaves other County-owned facilities to County regulation by interlocal agreement with the applicable municipality, where appropriate, or as otherwise provided by law.

SECTION 2. Definitions

2.1 Properties of Countywide Importance means county-owned parks, buildings and other properties developed and operated in furtherance of those special countywide powers enumerated in Section 1.4.

2.2 Development as used herein shall have the meaning ascribed to it in Sections 163.3164 and 380.04, Florida Statutes.

SECTION 3. County Regulation of Development The development of Properties of Countywide Importance shall be governed by County ordinances, permits and approvals and municipal ordinances shall not control or regulate the development of Properties of Countywide Importance, unless otherwise agreed to by the County by interlocal agreement. All permits or

approvals for development, except for placement of an actual zoning or future land use designation on a particular parcel, that are related to Properties of Countywide Importance shall be reviewed, issued, and enforced by the County. To the extent any municipal ordinance conflicts with the development policy set forth herein, this County ordinance shall prevail.

SECTION 4. Intergovernmental Coordination It is the intention of the Board of County Commissioners to coordinate consideration of the particular effects of County regulation of Properties of Countywide Importance as provided herein upon the development and community character of affected municipalities. Prior to the review and issuance of any permit or approval, the County shall notify affected municipalities of development plans, provide said municipality an opportunity to comment, and thereafter provide copies of County permits and approvals issued for development. The County will comply with any alternate process agreed to pursuant to interlocal agreement.

SECTION 5. Areas Embraced Pursuant to Sections 2.01 and 2.04 of the Pinellas County Charter, this ordinance shall be effective within the boundaries of Pinellas County.

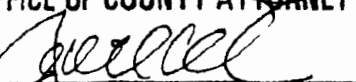
SECTION 6. Severability If any Section, Subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 7. Inclusion in Code It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to section, article or such other appropriate word or phrase in order to accomplish such intentions.

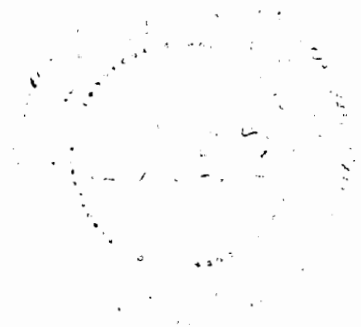
SECTION 8. Filing of Ordinance; Effective Date Pursuant to Section 125.66, Fla. Stat., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective upon filing of the ordinance with the Department of State.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By



Attorney



STATE OF FLORIDA

COUNTY OF PINELLAS

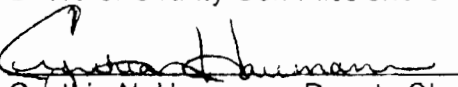
I, KEN BURKE, Clerk of the Circuit Court and Ex-officio Clerk to the Board of County Commissioners, in and for the State and County aforesaid, DO HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance adopted by the Board of County Commissioners of Pinellas County, Florida, on October 25, 2011 relative to:

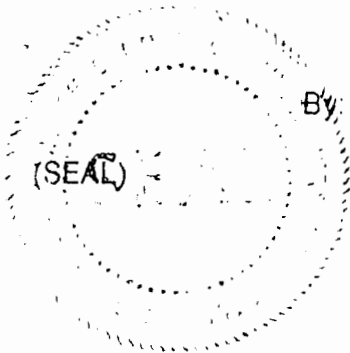
ORDINANCE NO. 11-42

AN ORDINANCE OF THE COUNTY OF PINELLAS IMPLEMENTING COUNTYWIDE AUTHORITY TO DEVELOP AND OPERATE CERTAIN COUNTY PROPERTIES DENOMINATED AS PROPERTIES OF COUNTYWIDE IMPORTANCE; PROVIDING LEGISLATIVE FINDINGS; DESIGNATING PROPERTIES OF COUNTYWIDE IMPORTANCE; PROVIDING FOR COUNTY REGULATION OF DEVELOPMENT; PROVIDING FOR INTERGOVERNMENTAL COORDINATION; PROVIDING FOR AREAS EMBRACED; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THE ORDINANCE AT PUBLIC HEARING AND WITH RESPONSIBLE AUTHORITIES

IN WITNESS WHEREOF, I hereunto set my hand and official seal this October 27, 2011.

KEN BURKE
Clerk of the Circuit Court
and Ex-officio Clerk to the
Board of County Commissioners

By 
Cynthia N. Haumann, Deputy Clerk





FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

DIVISION OF LIBRARY AND INFORMATION SERVICES

KURT S. BROWNING
Secretary of State

November 1, 2011

Honorable Ken Burke
Clerk of the Board of County Commissioners
Pinellas County Courthouse
315 Court Street, 5th Floor
Clearwater, Florida 33756

Attention: Ms. Cynthia N. Haumann, Manager, Board Records Department

Dear Mr. Burke:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated October 27, 2011 and certified copies of Pinellas County Ordinance Nos. 11-42 and 11-43, which were filed in this office on October 31, 2011.

As requested, one date stamped copy of each is being returned for your records.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

Enclosures

RECEIVED
BOARD OF
COUNTY COMMISSIONERS
PINELLAS COUNTY
2011 NOV -4 AM 10:11



R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: 850.245.6600 • Facsimile: 850.245.6282 • <http://info.florida.gov>
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NO. 2011-497

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. PETERSBURG INITIATING CONFLICT RESOLUTION PROCEDURES PROVIDED BY THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT PRIOR TO INITIATING COURT PROCEEDINGS; SPECIFYING THE ISSUES OF CONFLICT WITH THE GOVERNMENTAL ENTITY OF PINELLAS COUNTY, FLORIDA; DIRECTING THE CITY ADMINISTRATOR OR DESIGNEE TO PROVIDE A STATUTORILY MANDATED LETTER AND A CERTIFIED COPY OF THIS RESOLUTION TO THE COUNTY ADMINISTRATOR; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pinellas County has proposed an ordinance, the title of which begins AN ORDINANCE OF THE COUNTY OF PINELLAS IMPLEMENTING COUNTYWIDE AUTHORITY TO OPERATE, MAINTAIN, DEVELOP AND CONTROL CERTAIN COUNTY PROPERTIES.....'; and

WHEREAS, this ordinance would exempt properties (including rights of way and stormwater easements) owned and managed by Pinellas County from the effect of the municipality's ordinances when they are located within a municipality (collectively hereinafter simply referred to as 'county properties'); and

WHEREAS, municipal ordinances take into account the wishes of the citizens of each city and reflect the character of the municipality that the municipal citizens desire; and

WHEREAS, the County's regulatory ordinances do not reflect the nuances of each city's individual situation nor the needs of each city concerning redevelopment, maintenance, capital improvements, or the context of each property within the urban fabric of each city; and

WHEREAS, the City contends that the County does not have the authority to unilaterally assume regulatory control of county properties and rights-of-way within municipal boundaries and exempt them from all municipal regulation; and

WHEREAS, while the ordinance currently applies only to certain county properties (properties of "countywide importance"), if adopted it would set a precedent that could extend to all county properties, including those that are leased to for profit entities, as is the case on the county airport property, which compete for business with other for profit entities; and

WHEREAS, pursuant to Section 164.1052, Florida Statutes, the City seeks to initiate the conflict resolution proceedings provided by the Florida Governmental Conflict Resolution Act prior to initiating court proceedings; and

WHEREAS, the City's conflict, as required by Section 164.1052(1), Florida Statutes is as follows:

The governmental entity for Pinellas County, Florida has adopted an ordinance providing for the exemption of all countywide properties located within municipal boundaries from municipal permitting, land development regulations, comprehensive plans and other applicable municipal ordinances, that preempts the City's ability to enforce said regulations and transfers various City services, including building permitting and plan review of county-owned property, to Pinellas County. This action was taken without legal authority to assume regulatory control over properties located within municipal boundaries and to transfer City services, such as building permitting and plan review of county-owned property, to Pinellas County.

WHEREAS, pursuant to Section 164.1052(1), Florida Statutes, the City Administrator is required, within five (5) days after passage of the resolution, to send a certified copy of the resolution and a letter to the County Administrator for Pinellas County, Florida via certified mail, with a return receipt requested.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida that pursuant to Section 164.1052, Florida Statutes, the City Council seeks to initiate the conflict resolution proceedings provided by the Florida Governmental Conflict Resolution Act prior to initiating court proceedings as to the following conflict:

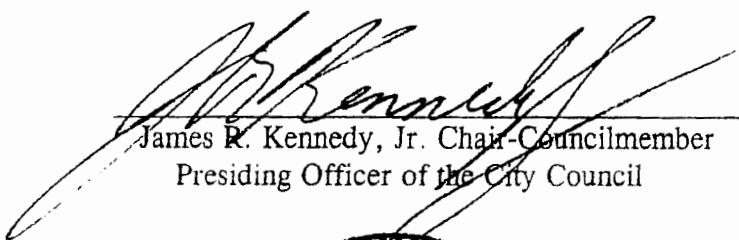
The governmental entity for Pinellas County, Florida has adopted an ordinance providing for the exemption of all countywide properties located within municipal boundaries from municipal permitting, land development regulations, comprehensive plans and other applicable municipal ordinances, that preempts the City's ability to enforce said regulations and transfers various City services, including building permitting and plan review of county-owned property, to Pinellas County.

This action was taken without legal authority to assume regulatory control over properties located within municipal boundaries and to transfer City services, such as building permitting and plan review of county-owned property, to Pinellas County.

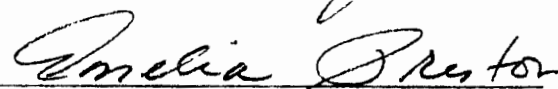
BE IT FURTHER RESOLVED that pursuant to Section 164.1052(1), Florida Statutes, the City Administrator or designee is directed, within five (5) days after passage of the resolution, to send a certified copy of the resolution and the statutorily required letter to the County Administrator for Pinellas County, Florida via certified mail, with a return receipt requested.

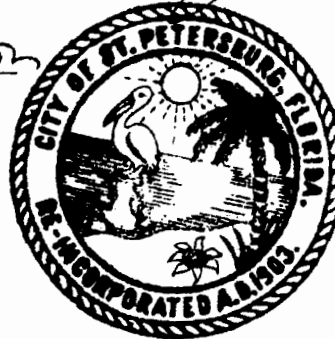
This resolution shall become effective immediately upon adoption.

Adopted at a regular session of the City Council held on the 21st day of November, 2011.


James R. Kennedy, Jr. Chair-Councilmember
Presiding Officer of the City Council

ATTEST:


Amelia Preston Deputy City Clerk



MEMORANDUM
CITY OF ST. PETERSBURG

TO: The Honorable Chair and City Council Members

FROM: Jeanne Hoffmann, Assistant City Attorney

DATE: December 5, 2013

RE: County preemption ordinance no. 11-42 and interlocal agreement

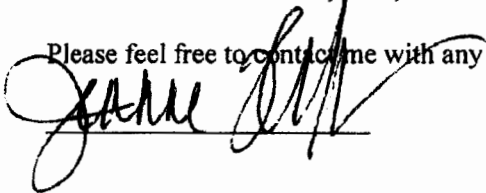
Following the resolution passed by City Council in 2011 initiating the chapter 164, Florida Statutes ("Florida Governmental Conflict Resolution Act") procedures, City and County staff have met a number of times, beginning January 23, 2012, to attempt to resolve issues related to the County preemption ordinance (No. 11-42). On November 19, 2012, a City Council workshop was held. The County staff provided an overview of the ordinance and City and County staff jointly presented the latest version of the draft interlocal agreement. Since the workshop, City and County staff continued to work on several versions of the draft and finalized the exhibits. The agreement provides, in part, for the following:

1. **Community Redevelopment Areas:** Any project located within the boundaries of the current CRAs shall be exempt from the terms of the ordinance, as long as the interlocal agreement is in full force and effect.
2. **Specials Area Plans, Activity Centers and Developments of Regional Impact:** Any project located within the boundaries of any these areas shall be exempt from the terms of the ordinance, with the exception of the property known as "Toytown", as long as the interlocal agreement is in full force and effect.
3. **Toytown:** The Toytown Landfill ("Toytown") which is governed by a recorded development agreement is subject to the terms and conditions of that development agreement and a remaining term of approximately 16 more years; the ordinance does not modify or amend the terms and conditions of the agreement, which may only be amended by mutual consent.
4. **Application of Zoning Categories or LDRs:** To the extent that the County reviews and issues permits utilizing the County's zoning categories or LDRs for any development located on the properties, the County shall ensure that the City will not be inconsistent with its Comprehensive Plan or non-compliant with Florida Statutes.
5. **Liability:** In acting as the local enforcement agency for those projects requiring review and approval under the FBC, as well as acting as the local government when applying the County's Comprehensive Plan and LDRs and federal and state law when developing a project pursuant to the ordinance, the County has agreed to indemnify the City. This will survive the termination or expiration of the agreement.
6. **Legal Remedies:** Generally, the execution of the agreement shall not be interpreted or construed at any time as a waiver or release by the City or County of any claims, causes

of action or defenses of any nature related to the validity of the ordinance. This will survive the expiration or termination of the agreement.

7. **Fire Review and Inspections:** The City will conduct fire plan review and inspections associated with any project and the County will pay the City the City's usual charge(s).
8. **Building Permits and Approval:** The County will act as the local enforcement agency for projects that require review and approval under the Florida Building Code (FBC), and will issue all applicable permits and certificates of occupancy. The City's building official shall have no liability.
9. **City Services, Process & Fees:** To the extent any project requires the delivery of municipal water or sewer services that will require a new physical connection to the municipal system, the County shall review the new connection with the City to ensure consistency with the municipal system and infrastructure. The County will pay the City's usual charges for such connection and any City services. Further, to the extent a vacation of a City right-of-way or easement is required for a project, the County will adhere to the City's process for vacations and pay the City's usual charge for such vacation. And, to the extent the County is not exempt from fees, the County agrees to pay the fee required by its countywide transportation impact fee ordinance and distribute the proceeds accordingly.
10. **Public Notice:** The County will provide notice to the public pursuant to the notice provisions contained in the City's LDRs, unless the County LDRs provide for greater public notification in which case the County's LDRs will prevail.
12. **Application:** The ordinance does not apply to stormwater drainage facilities or public rights-of-way, or preempt any City regulation that is not related to development, including but not limited to, roadside solicitation, activities occurring on the Pinellas Trail, or the noise ordinance.
13. **Signs:** The County agrees it will not construct any off-premise signs (i.e. billboards) on any properties regardless of whether County LDRs would allow them.
14. **Compliance with federal and state requirements:** When implementing County LDRs on a project, the County shall coordinate with the City to ensure that County action will not prevent the City from meeting its legal obligations, including being able to maintain compliance with federal and state permits and/or regulations.
15. **Term of Agreement:** The agreement is for 10 years, plus an option for three five year renewal periods.
16. **Periodic Reviews:** A periodic review will occur every five years unless there is a change to a DRI, SAP, CRA or a development agreement.

Please feel free to contact me with any questions.



RESOLUTION _____

A RESOLUTION AUTHORIZING THE MAYOR OR
HIS DESIGNEE TO EXECUTE AN INTERLOCAL
AGREEMENT REGARDING PINELLAS COUNTY
ORDINANCE NO. 11-42; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, on August 23, 2011, the Board of County Commissioners ("BOCC") scheduled a public hearing to be held by the County's Local Planning Agency ("LPA") for Ordinance No. 11-42 ("Ordinance"), related to properties which the County deems to be of countywide importance ("Properties of Countywide Importance"); and

WHEREAS, Properties of Countywide Importance are defined by the County as all county-owned parks, buildings and other properties developed and operated in furtherance of those special countywide powers enumerated in Section 1.4 of the Ordinance; and

WHEREAS, the County's stated purpose for the Ordinance is to preempt municipal regulation of development on Properties of Countywide Importance located within municipal boundaries to the extent specifically set forth in the Ordinance, exempt the properties from all municipal ordinances, while reserving to the County authority to review and issue any permits or approvals for development; and

WHEREAS, the City does not concur with the County's Ordinance, including the interpretation of County Charter Section 2.04 which is stated in section 1.4 of the Ordinance, or the Ordinance's stated purpose to preempt municipal regulation of development on Properties of Countywide Importance located within municipal boundaries, or that the County has the authority to review and issue any permits or approvals for said development; and

WHEREAS, the County currently has plans to utilize the Sod Farm property, as described in paragraph 18 of the interlocal agreement, for a solid waste landfill that would, if fully developed as planned, and over the objections and existing land development regulations of the City, be 150 feet in height; and

WHEREAS, based upon current utilization projections, the Bridgeway Acres landfill has sufficient capacity to accept waste permitted to be received at a Class 1 Landfill through 2054,

and if the Sod Farm is developed for landfill uses in accordance with current plans, that capacity will extend through 2105; and

WHEREAS, new and emerging technologies and best practices in the solid waste disposal industry may lessen reliance on landfill operations in the future; and

WHEREAS, the County has no present intent to develop additional landfills within the City beyond those either currently in operation (Bridgeway Acres) or currently planned for future use (Sod Farm); and

WHEREAS, the City first learned of the Ordinance on August 23, 2011, and subsequently sent a letter to the Chairman of the County's LPA outlining its concerns and objections with the proposal prior to the LPA's September 8, 2011, public hearing, attached hereto as Exhibit A; and

WHEREAS, the LPA voted to recommend approval of the Ordinance to the BOCC; and

WHEREAS, the City provided additional documentation to the BOCC that set forth its concerns and objections related to the Ordinance, attached hereto as Exhibit B; and

WHEREAS, at the two public hearings on the Ordinance before the BOCC, staff for the City appeared and expressed the City's concerns with and opposition to the Ordinance; and

WHEREAS, the County passed the Ordinance after the second public hearing on October 11, 2011, attached hereto as Exhibit C; and

WHEREAS, on November 21, 2011, the City Council of the City of St. Petersburg passed Resolution No. 2011-497, attached hereto as Exhibit D, stating its objections to the Ordinance and, initiating the conflict resolution proceedings provided for in Section 164.1052, Florida Statutes, as to the conflict set forth therein; and

WHEREAS, staff of the County and City have undertaken the conflict assessment phase of Florida Statutes chapter 164 proceedings, meeting several times over the course of many months to discuss the issues raised in Resolution No. 2011-497, which has resulted in this Interlocal Agreement ("Agreement"); and

WHEREAS, the Parties are participating in good faith to achieve this Agreement as to the Ordinance, subject to the terms and conditions contained herein, with the intent to preserve the legal status quo; and

WHEREAS, it is the Parties' intent that their participation in and execution of the Agreement does not equate to and shall not be interpreted at any time: 1) as a waiver or release of any or all claims or defenses as to the validity of the Ordinance; 2) that the City agrees in any manner that the Ordinance is a valid exercise of County authority; 3) that the County agrees in any way that the Ordinance is not a valid exercise of County Charter authority; 4) that the City has acquiesced to the Ordinance in any manner by entering into this Agreement; or 5) that the County has relinquished its right to develop Properties of Countywide Importance pursuant to the Ordinance; and

WHEREAS, the Parties expressly reserve their respective rights to pursue any claims in any manner provided by law and to seek any available legal remedies as to the Ordinance at any time; and

WHEREAS, the execution of the agreement tolls the applicable statute of limitations or other affirmative defenses that would bar a lawsuit based upon the passage of time, related to any cause of action the City may bring specifically related to development pursuant to the ordinance, of any project located on the solid waste properties that is not governed by the Toytown Development Agreement, until such time as required notice is given by the County to the City, regarding a proposed project; and

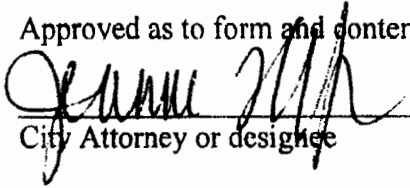
WHEREAS, the County and City have the express authority to enter into this Agreement in order to make the most efficient use of their powers by cooperating in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties agree to enter into this Agreement, pursuant to sections 163.01 and 164.1057, Florida Statutes, and section 3 of the Ordinance which provides for the Parties to enter into an interlocal agreement.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, pursuant to sections 163.01 and 164.1057, Florida Statutes, that the Mayor or his designee executes the interlocal agreement regarding Pinellas County Ordinance No. 11-42.

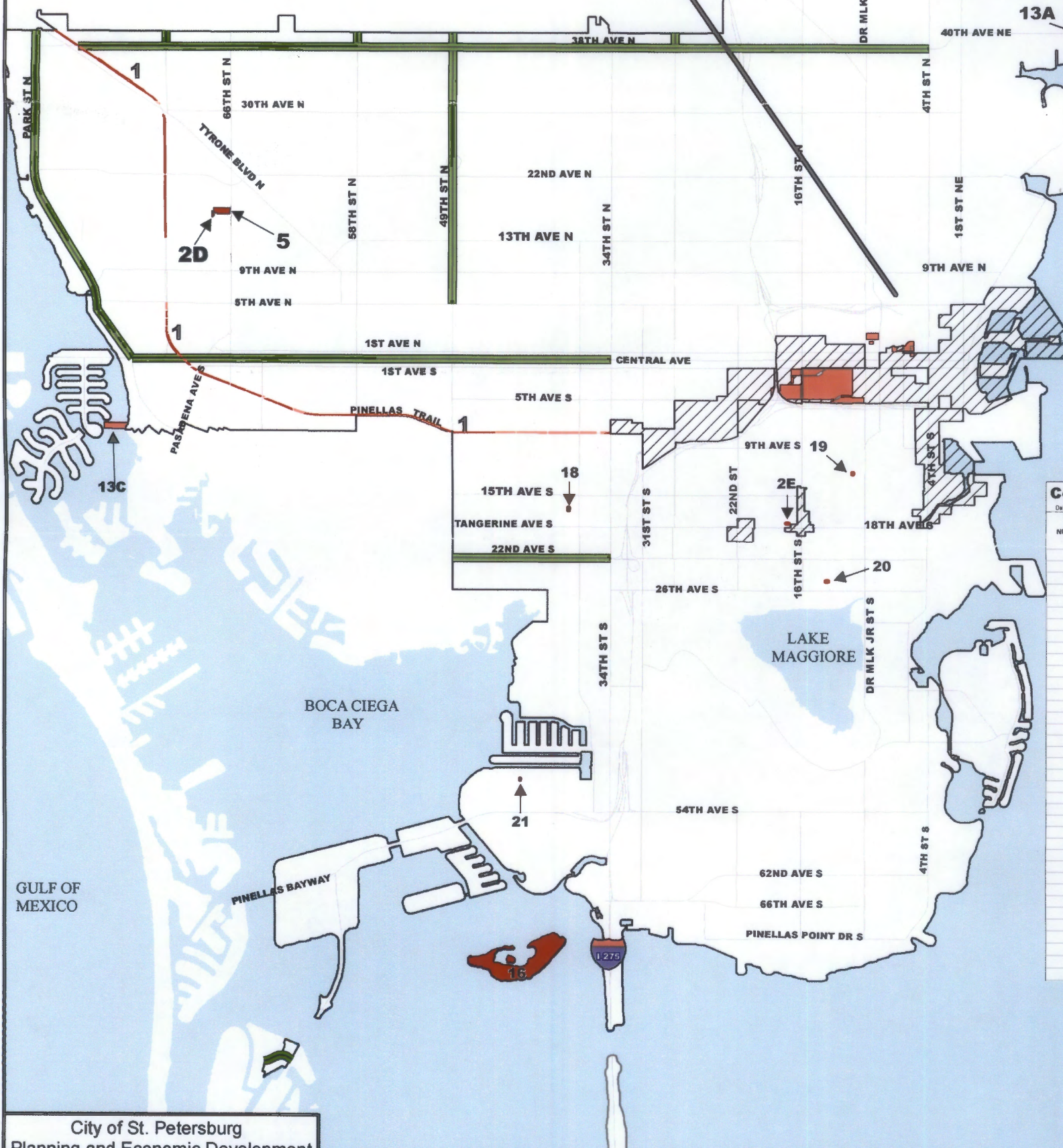
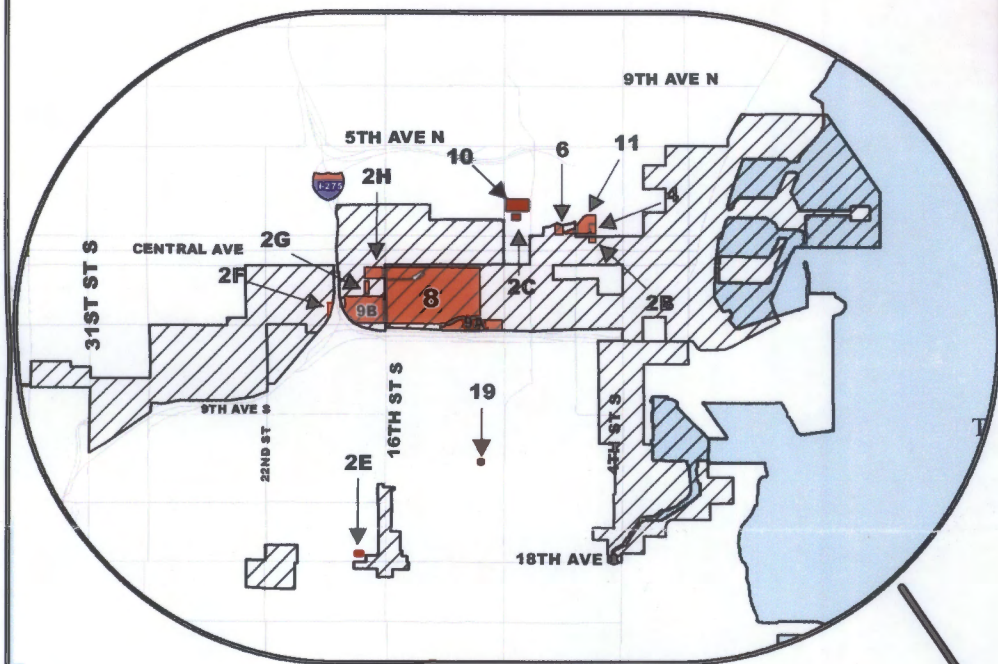
This resolution shall become effective immediately upon adoption.

Approved as to form and content:



City Attorney or designee

Map of Community Redevelopment Areas



County-Owned / Controlled Properties		
Data Source: Peninsula Property Appraiser, April 2013		
NUMBER	ADDRESS	PROPERTY USE
1	-	PINELLAS TRAIL
2A	SAN MERRIO BLVD NE AND MONACO DR	VACANT
2B	1ST AVE N AND 5TH ST N	VACANT
2C	2ND AVEN AND 6TH ST N	VACANT
2D	6TH TERR N AND 6TH ST N	VACANT
2E	10TH AVE S AND 5TH ST S	VACANT
2F	4TH AVE S AND 9TH ST S	VACANT
2G	3RD AVE S AND 9TH ST S	VACANT
3H	2ND AVE S AND 10TH ST S	VACANT
3	16TH AVENUE AND SAN MARTIN BLVD	TOTAL SWAMP
4	501 1ST AVE N	SOBUBUILDING - TAX COLLECTOR
5	900 66TH ST N	COUNTY TRAFFIC COURT
6	647 1ST AVE N	PINELLAS COUNTY DEPT OF SOCIAL SERVICE
7A	SMUG HARBOR RD (WATER)	WEDDON FELD PRESERVE
7B	WEDDON DR NE AND POWER PLANT RD	WEDDON FELD PRESERVE
8	TROPICANA FIELD	TROPICANA FELD & PARKING LOT
9A	TROPICANA FIELD	PARKING LOT
9B	TROPICANA PARKING (WEST)	PARKING LOT (WEST)
10	705 DR ML KING JR ST N	PINELLAS COUNTY HEALTH DEPT.
11	60 5TH ST E	JUDICIAL BLDG
12A	78TH AVE N AND 4TH ST N	STORMWATER
12B	Water parcels - 77th Ave N and DR 4TH ST N	STORMWATER
13B	ROOSEVELT BLVD	STORMWATER
14D	ROOSEVELT BLVD AND 38TH ST N	STORMWATER
15E	16TH AVE N AND 72ND ST N	STORMWATER
16A	40TH AVE N AND 97TH ST NE	SUBMERGED LAND
17B	Smug Harbor RD (WATER)	SUBMERGED LAND
18C	Water Parcel - Sunset Dr S	SUBMERGED LAND
19	0501 38TH ST N	FUTURE LANDFILL SITE
19	Toy Town	CLOSED TOY TOWN LANDFILL SITE
19	INDIAN KEY ISLAND	INDIAN KEY
19A	16TH AVENUE AND SAN MARTIN BLVD	MARSHWETLAND
19B	FEATHER SOUND DR	BORROWPIT/MARSH
19	17TH AVE S AND 38TH ST S	VACANT
19	17TH AVE S AND 10TH ST S	VACANT
20	240 9TH ST S	SINGLE FAMILY
20	2000 AVE S AND 15TH ST S	



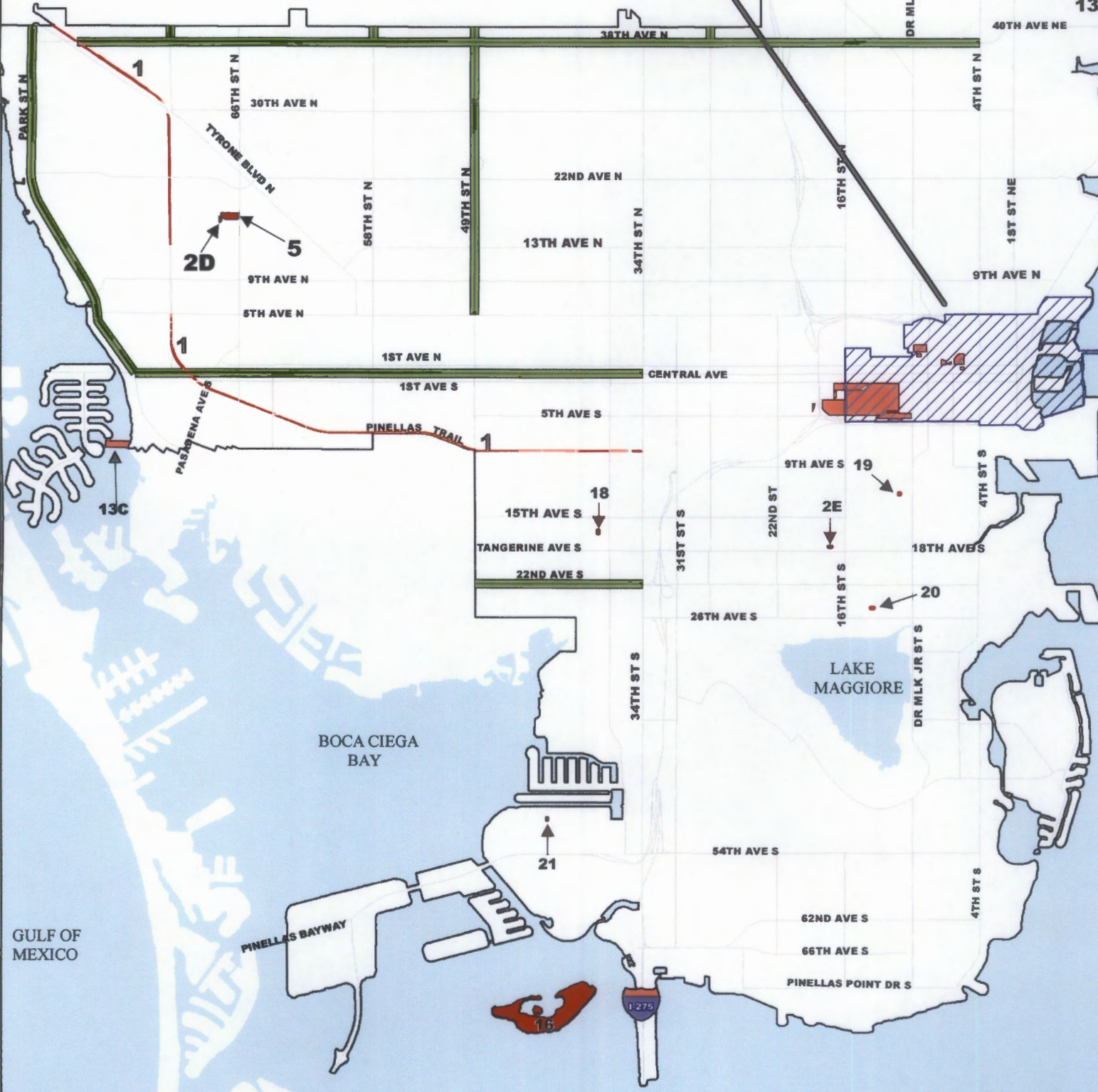
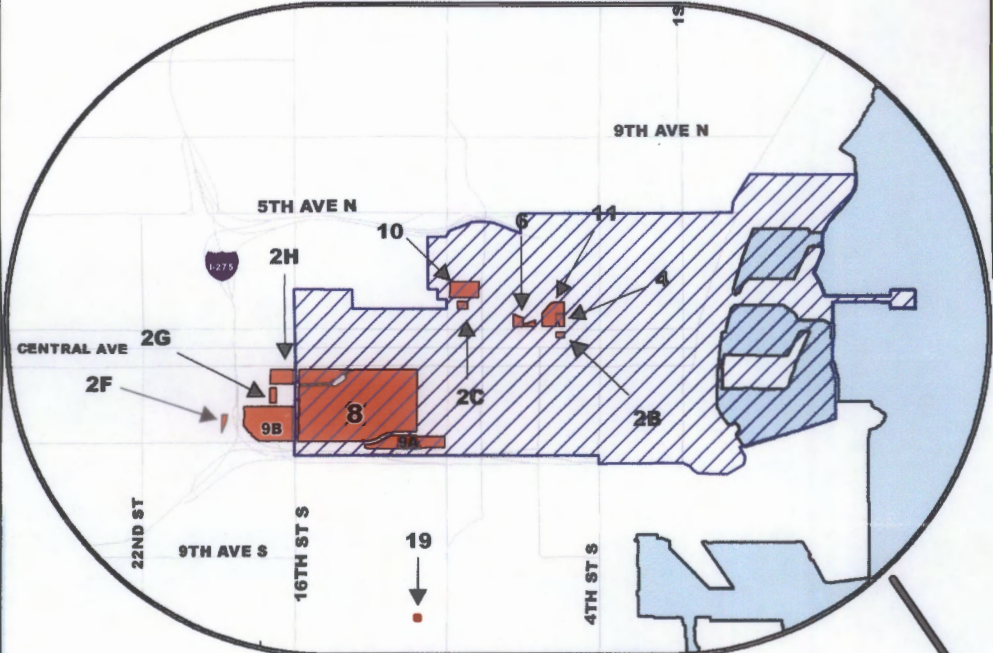
Exhibit F

Map of Areawide Development of Regional Impact Areas

County Owned Parcels

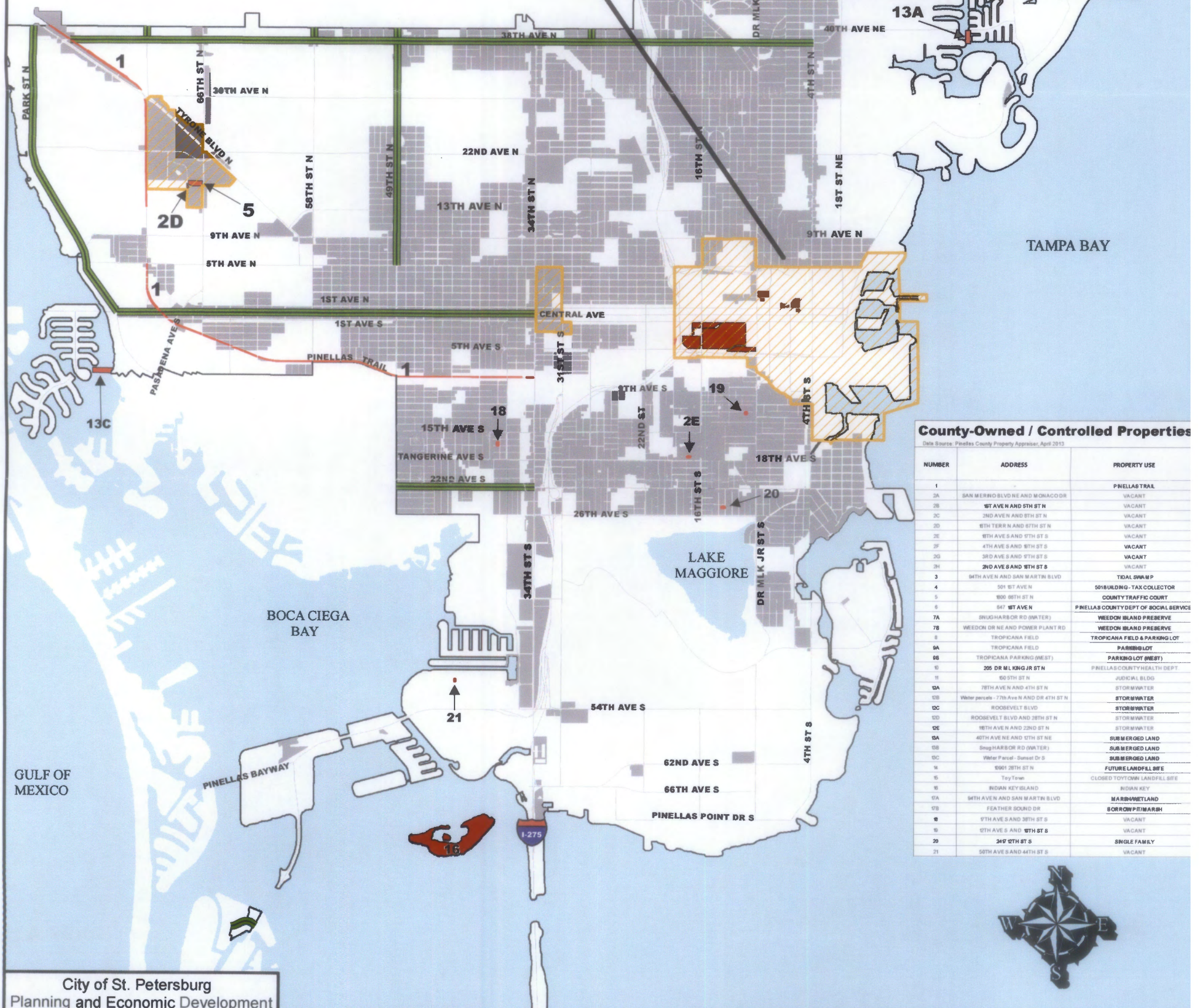
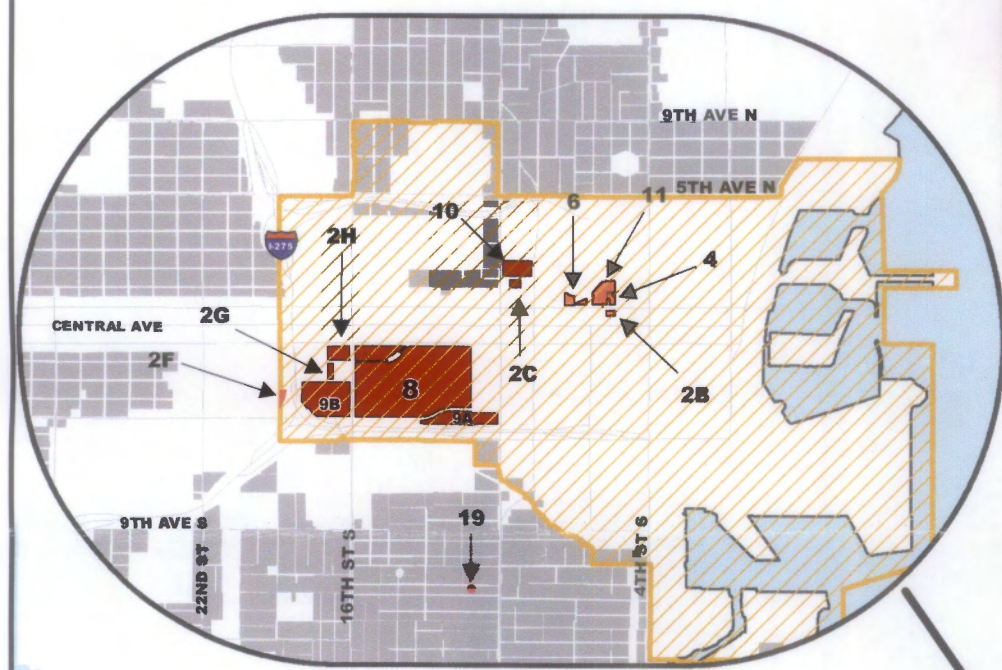
Areawide DRI Boundary

County Controlled Right-Of-Way



County-Owned / Controlled Properties		
Data Source: Pinellas County Property Appraiser, April 2013		
NUMBER	ADDRESS	PROPERTY USE
1	PINELLAS TRAIL	PINELLAS TRAIL
2A	SAN MERRIO BLVD NE AND MONACO DR	VACANT
2B	1ST AVE N AND 5TH ST N	VACANT
2C	2ND AVE N AND 6TH ST N	VACANT
2D	6TH TERR N AND 6TH ST N	VACANT
2E	6TH AVE S AND 6TH ST S	VACANT
2F	4TH AVE S AND 6TH ST S	VACANT
2G	3RD AVE S AND 6TH ST S	VACANT
2H	2ND AVE S AND 6TH ST S	VACANT
3	94TH AVE N AND SAN MARTIN BLVD	TIDAL BASIN
4	501 1ST AVE N	STORAGE - TAX COLLECTOR
5	800 66TH ST N	COUNTY TRAFFIC COURT
6	647 9TH AVE N	PINELLAS COUNTY DEPT OF SOCIAL SERVICE
7A	SKUGU HARBOR RD (WATER)	WEDDON ISLAND PRESERVE
7B	WEDDON DR NE AND POWER PLANT RD	WEDDON ISLAND PRESERVE
8	TROPICANA FIELD	TROPICANA FIELD & PARKING LOT
8A	TROPICANA FIELD	PARKING LOT
8B	TROPICANA PARKING (WEST)	PARKING LOT (WEST)
9	205 DR MLK JR ST N	PINELLAS COUNTY HEALTH DEPT
11	60 5TH ST N	JUDICIAL BLDG
12A	78TH AVE N AND 4TH ST N	STORMWATER
12B	Water parcels - 77th Ave N and Dr 4TH ST N	STORMWATER
12C	ROOSEVELT BLVD	STORMWATER
12D	ROOSEVELT BLVD AND 38TH ST N	STORMWATER
12E	18TH AVE N AND 32ND ST N	STORMWATER
13A	40TH AVE N AND 10TH ST NE	SUBMERGED LAND
13B	SKUGU HARBOR RD (WATER)	SUBMERGED LAND
14	Water Parcel - Sunset Dr S	SUBMERGED LAND
15	0801 28TH ST N	FUTURE LANDFILL SITE
16	ToyTown	CLOSED TOY TOWN LANDFILL SITE
17	INDIAN KEY ISLAND	INDIAN KEY
17A	94TH AVE N AND SAN MARTIN BLVD	MARSHWETLAND
17B	FEATHER SOUND DR	BORROW PIT/MARSH
18	6TH AVE S AND 38TH ST S	VACANT
19	10TH AVE S AND 10TH ST S	VACANT
20	247 10TH ST S	SHOULDER FARM
21	50TH AVE S AND 44TH ST S	VACANT

Map of Activity Centers and Special Area Plan Areas



County-Owned / Controlled Properties		
NUMBER	ADDRESS	PROPERTY USE
1		PHELLASTRAL
2A	SAN MERRIO BLVD NE AND MONACODR	VACANT
2B	5TH AVE N AND 5TH ST N	VACANT
2C	2ND AVE N AND 5TH ST N	VACANT
2D	6TH TERR N AND 4TH ST N	VACANT
2E	18TH AVE S AND 9TH ST S	VACANT
2F	4TH AVE S AND 8TH ST S	VACANT
2G	3RD AVE S AND 9TH ST S	VACANT
2H	2ND AVE S AND 9TH ST S	VACANT
3	56TH AVE N AND SAN MARTIN BLVD	TOTAL SWAMP
4	505 1ST AVE N	50-BUILDING - TAX COLLECTOR
5	600 26TH ST N	COUNTY TRAFFIC COURT
6	647 5TH AVE N	PHELLAS COUNTY DEPT OF SOCIAL SERVICE
7A	SMUG HARBOR RD (WATER)	WEEDON ISLAND PRESERVE
7B	WEEDON DR NE AND POWER PLANT RD	WEEDON ISLAND PRESERVE
8A	TROPICANA FIELD	TROPICANA FIELD & PARKING LOT
8B	TROPICANA FIELD	PARKING LOT
8C	TROPICANA PARKING (WEST)	PARKING LOT (WEST)
9	205 DR ML KING JR ST N	PHELLAS COUNTY HEALTH DEPT
10	650 5TH ST N	JUDICIAL BLDG
11A	78TH AVE N AND 4TH ST N	STORMWATER
11B	Water parcel - 77th Ave N and DR 4TH ST N	STORMWATER
12C	ROOSEVELT BLVD	STORMWATER
13C	ROOSEVELT BLVD AND 28TH ST N	STORMWATER
14E	18TH AVE N AND 22ND ST N	STORMWATER
15A	40TH AVE N AND 17TH ST NE	SUBMERGED LAND
15B	SMUG HARBOR RD (WATER)	SUBMERGED LAND
15C	Water Parcel - Sunset Dr S	SUBMERGED LAND
16	6901 28TH ST N	FUTURE LANDFILL SITE
17	ToyTown	CLOSED TOY TOWN LANDFILL SITE
18	INDIAN KEY ISLAND	INDIAN KEY
19A	96TH AVE N AND SAN MARTIN BLVD	MARSHWETLAND
19B	FEATHER SOUND DR	BORCHOW PIT MARSH
20	17TH AVE S AND 38TH ST S	VACANT
21	9TH AVE S AND 10TH ST S	VACANT
22	245 17TH ST S	SINGLE FAMILY
23	50TH AVE S AND 44TH ST S	VACANT

Exhibit H

