



City of Stuart

AGENDA

REGULAR MEETING OF THE STUART CITY COMMISSION

MAY 28, 2024

AT 5:30 PM

COMMISSION CHAMBERS

121 SW FLAGLER AVE.

STUART, FLORIDA 34994

CITY COMMISSION

Mayor Rebecca S. Bruner

Vice Mayor Campbell Rich

Commissioner Eula R. Clarke

Commissioner Christopher Collins

Commissioner Troy McDonald

ADMINISTRATIVE

City Manager, Michael J. Mortell

City Attorney, Lee J. Baggett

City Clerk, Mary R. Kindel

Agenda items are available on our website at <http://www.cityofstuart.us>
Phone: (772) 288-5306. Fax: (772) 288-5305. E-mail: mkindel@ci.stuart.fl.us

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation to attend this meeting should contact the City's ADA coordinator at 772-288-5306 at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.

(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMENTS FROM THE PUBLIC (Non-Agenda Related) (3 Minutes Max.)

CONSENT CALENDAR

1. APPROVAL OF 05/13/2024 CCM MINUTES (RC)
2. SUPPORTING A PETITION FROM THE CBD TO THE EPA ON WATER QUALITY STANDARDS FOR CYANOTOXINS (RC):

RESOLUTION No. 34-2024; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR TO ENDORSE A PETITION FROM THE CENTER FOR BIOLOGICAL DIVERSITY (CBD) REQUESTING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) TO ESTABLISH NEW HUMAN HEALTH WATER QUALITY CRITERIA FOR CYANOTOXINS IN THE STATE'S CLASS I, II, AND III SURFACE WATERS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

END OF CONSENT CALENDAR

COMMISSION ACTION

3. OYSTER GARDEN PROJECT ALONG THE DOWNTOWN RIVERWALK WITH THE CCA (RC):

RESOLUTION No. 53-2024; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE COASTAL CONSERVATION ASSOCIATION (CCA) OF FLORIDA TO COORDINATE THE INSTALLATION OF VERTICAL OYSTER GARDENS ALONG THE DOWNTOWN RIVERWALK FOR THE PURPOSE OF IMPROVING WATER QUALITY AND PROVIDING SAFE HABITAT FOR OYSTERS AND OTHER MARINE LIFE; FURTHER AUTHORIZING THE CCA TO MAINTAIN, MONITOR AND COLLECT DATA FROM THE OYSTER GARDENS AS STEWARDS OF THE ENVIRONMENT AND THE PUBLIC TRUST; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ORDINANCE SECOND READING

4. CLARITY POINTE PUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT LOCATED AT 500 SE INDIAN STREET (LEGISLATIVE) (RC):

ORDINANCE No. 2529-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCEL OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING

DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

5. CLARITY POINTE PUD - REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) ZONING DESIGNATION LOCATED AT 500 SE INDIAN STREET (QJ)(RC):

ORDINANCE No. 2530-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REZONING THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR AN APPROXIMATELY 9.46 ACRE PARCEL OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

ORDINANCE FIRST READING

DISCUSSION AND DELIBERATION

ADJOURNMENT

WHAT IS CIVILITY? Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.

PUBLIC COMMENT: If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.

CONSENT CALENDAR: Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.

QUASI-JUDICIAL HEARINGS: Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.

INVOCATION: Any invocation that may be offered at the opening of the Commission meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Commission, and the Commission is not allowed by law to endorse the religious beliefs or views of this, or any other speaker.

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 5/28/2024

Prepared by: Nina Mullin

Title of Item:

APPROVAL OF 05/13/2024 CCM MINUTES (RC)

Summary Explanation/Background Information on Agenda Request:

N/A

Funding Source:

N/A

Recommended Action:

Approve Item.

ATTACHMENTS:

1. 05/13/2024 CCM Minutes

MINUTES
REGULAR MEETING OF THE STUART CITY COMMISSION
MAY 13, 2024
AT 4:00 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Rebecca S. Bruner
Vice Mayor Campbell Rich
Commissioner Eula R. Clarke
Commissioner Christopher Collins
Commissioner Troy McDonald

ADMINISTRATIVE

City Manager, Michael J. Mortell
City Attorney, Lee J. Baggett
City Clerk, Mary R. Kindel

ROLL CALL

4:03 PM

PRESENT: Mayor Bruner, Vice Mayor Rich, Commissioner Clarke, Commissioner Collins, Commissioner McDonald

INVOCATION

Edward Skiba, Stuart Police Chaplain gave the Invocation.

PLEDGE OF ALLEGIANCE

1. ARTS MOMENT - NATALIA CARABALLO SONG PERFORMANCE

Ms. Caraballo sang "When I am Laid in Earth" by Henry Purcell.

Clerks Note: Mayor Bruner announced that Service Awards will be presented before Proclamations.

PRESENTATIONS

11. SERVICE AWARDS - MAY 2024

Matthew Reeder	Police	5 years	(Present)
Tyler Bovee	Police	10 years	(Absent)
Eileen Finley	Police	10 years	(Absent)

PROCLAMATIONS

2. POLICE MEMORIAL WEEK - MAY 12-18, 2024

Police Chief, Joe Tumminelli, accepted the Proclamation. Mayor Bruner announced that two officers had been recently sworn in and thanked the Police Department for a recent solving of an investigation involving a hit and run.

3. WOMAN'S CLUB OF STUART 110TH ANNIVERSARY

Cecilia Lewis, President of the Woman's Club, received the Proclamation.

4. BOYS & GIRLS CLUB YOUTH OF THE YEAR - JOMAR ZELAYA

Jomar Zelaya, Youth of the Year winner, and Meghan Shirley of Boys & Girls Club, accepted the Proclamation.

5. FLORIDA EMANCIPATION DAY - MAY 20, 2024

Jimmy Smith, President of the National Association for the Advancement of Colored People (NAACP), accepted the Proclamation and invited the public to the Church of God to celebrate Emancipation Day, on May 20th at 5:00 p.m.

6. SAFE BOATING WEEK - MAY 18-25, 2024

Sheryl O'Neil, Flotilla Commander, Markus Kiriakaw, Division 5 Commander, Dianne Riggan, along with Hank Cushard, Gary Bowerman, Ray Preiksaitis, and Bryan Buckley, accepted the Proclamation and took a group photo with the Commission, wearing life jackets; invited all to three upcoming boating safety events.

7. PUBLIC WORKS WEEK - MAY 19-25, 2024

Milton Leggett, Public Works Director, thanked the Commission for the Proclamation and proudly stated, "No one works like Public Works!"

8. MENTAL HEALTH AWARENESS MONTH - MAY 2024

Suzy Hutcheson, Chief Executive Officer of Helping People Succeed, accepted the first Mental Health Awareness Proclamation, and noted progress made in the community.

Janice Greller, Executive Director of the National Alliance on Mental Illness of Treasure Coast, accepted the second Mental Health Awareness Month Proclamation and announced various programs offered.

9. HISTORIC PRESERVATION MONTH - MAY 2024

Joette Lorion Rice, of the Martin County Historic Preservation Board, accepted the Proclamation, thanked the City for its support, and announced some of the planned events.

10. GARDEN WEEK - JUNE 2-8, 2024

Rosita Aristoff, President of the Garden Club, received the Proclamation and presented the

City with a flower arrangement.

COMMENTS BY CITY COMMISSIONERS

Commissioner Clarke

- Commented on the recent Ribbon Cutting Ceremony for the City's Reverse Osmosis Water Treatment Facility and invited Peter Kunen, Utilities & Engineering Director, to the podium to announce information on the treatment facility.
- Encouraged the public to participate in the various events for Historic Preservation Month and to learn more about Emancipation Day.
- Announced an upcoming Town Hall at the East 10th Street Community Center on June 13th at 6:00 PM.
- Commented on Memorial Day, noted that the next Commission Meeting will be on Tuesday at 5:30 PM.
- Congratulated Milton Leggett and his staff on Public Works Week.

Commissioner Collins

- Thanked Sheriff William Snyder for his input into our community as well as the members of the public.

Vice Mayor Rich

- Commented on a South Florida Water Management District (SFWMD) board meeting that culminated with the Water Treatment Plant ceremony.
- Reported that he attended the Treasure Coast Council of Local Government (TCCLG) meeting and noted a presentation focused on stormwater issues.
- Thanked the SFWMD for attending a reception at the Florida Oceanographic Society (FOS).
- Reported that he attended the Rivers Coalition Meeting and commented on a constitutional amendment to be placed on the ballot for the right to clean and healthy waters. He read the amendment into the record and noted that a link, therighttocleanwater.com, could possibly be added to the City's website; asked for public support.

Commissioner McDonald

- Commented that the opening of the Reverse Osmosis Water Treatment Plant was a monumental event; recognized all who were part of the project.

Mayor Bruner

- Commented on DAR and the anniversary of D-Day. Announced there will be an open house for the 80th anniversary at the Road to Victory Museum.
- Inquired on previous comment on the 7th street traffic/4 way stop.

City Manager Mortell stated the stop sign was installed the week following the original request.

COMMENTS BY CITY MANAGER

City Manager Mortell

- Commented that the Florida East Coast Railroad (FECR) is applying for a CRISI Grant and the City will be preparing a letter from the Mayor for the railroad bridge.
- Commented, as noted by Commissioner Rich, a couple of weeks ago, employee Anne Hawkins was awarded the Wendy Lee Parker Award, and the City also received the Environment Education Award for its composting program.
- Read a letter received thanking the Police Department for their ride-along learning experience.
- Reported that the Commission has moved forward with a new program for parking tickets.
- Commented that Eve Samples, Executive Director of the Friends of the Everglades, asked the City to join them to set levels for cyanotoxins in the water. The petition needs to be filed by May 23rd, requested a motion to authorize the Mayor to participate, and it will be on the May 28th City Commission Meeting as a formal item on the agenda.

Ms. Samples came forward to provide a brief explanation.

5:25 PM MOTION: Approve. [To authorize the Mayor to participate in the filing of a petition.]

MOVED BY: Troy McDonald

SECONDED BY: Eula Clarke

Motion approved unanimously.

City Manager Mortell (continued)

- Commented that he asked the City Attorney to report on the processes of quasi-judicial and quasi- legislative on the agenda items in this meeting to provide clear direction to the Commission and participants. City Attorney Lee Bagget provided direction.

APPROVAL OF AGENDA

5:31 PM MOTION: Approve.

MOVED BY: Troy McDonald

SECONDED BY: Campbell Rich

Motion approved unanimously.

COMMENTS FROM THE PUBLIC (Non-Agenda Related) (3 Minutes Max.)

1. Sheriff William Snyder - Stuart; Commented that as a member of law enforcement, he feels obligated to speak on the issue of rehabilitation centers and the issues they face with such facilities; opposed to the project.
2. Jack Nafpliotis - Stuart; Concerned about the transients coming to the City as patients of the rehab facility.
3. Caryn Hall Yost-Rudge - Stuart; Commented that public comment should be on the agenda before Commissioner Comments; stated some issues she has with the Commission.

4. Robin Cartwright - Stuart; Commented on conflicts of interest and ethics, pertaining to campaign accounts.

CONSENT CALENDAR

12. APPROVAL OF 04/22/2024 CCM MINUTES (RC)

5:48 PM MOTION: Approve.
MOVED BY: Troy McDonald
SECONDED BY: Eula Clarke
Motion approved unanimously.

END OF CONSENT CALENDAR

COMMISSION ACTION

13. **(INFORMATIONAL ONLY)**

CLARITY POINTE PUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT LOCATED AT 500 SE INDIAN STREET (LEGISLATIVE) (RC):

ORDINANCE No. 2529-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCEL OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

Jodi Kugler, Development Director, presented, for informational purposes only, the Clarity Pointe Future Land Use Map Amendment.

The applicant, Brad Currie, briefly presented to confirm the consistency with the Comprehensive Plan and request approval when the item is returned to the Commission for Second Reading.

Vice Mayor Rich commented on the Comprehensive Plan and gave statistics on the vacant land in the City. Reports state the City needs more affordable housing and cannot support a change to the land use.

Commissioner Collins agreed with Commissioner Rich and does not support moving forward with changing the land use.

Commissioner Clarke commented on the Comprehensive Plan and the need for discussion pertaining to residential vs. commercial. Stated she spoke with people from the Local Planning Agency (LPA) and reviewed the vote on both the land use and the zoning.

PUBLIC COMMENT:

1. Larry Dombrow - Stuart; Commented on the zoning and is opposed to the project.

6:09 PM MOTION: Approve.

MOVED BY: Campbell Rich

SECONDED BY: Troy McDonald

Motion approved unanimously.

ORDINANCE SECOND READING

ORDINANCE FIRST READING

14. CLARITY POINTE PUD - REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) ZONING DESIGNATION LOCATED AT 500 SE INDIAN STREET (QJ)(RC):

ORDINANCE No. 2530-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REZONING THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR AN APPROXIMATELY 9.46 ACRE PARCEL OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

Mayor Bruner requested ex-parte communications from the Commission. Commissioners disclosed all communications.

Four (4) people sworn; Jodi Kugler, City of Stuart Development Director, Brad Currie, Engineering Design & Construction, Michael Gauger, Retired Deputy Chief of Palm Beach County Sheriff's Department, Jason Ackner, resident.

Jodi Kugler, Development Director, presented Agenda Item #14.

Michael Gauger, retired Chief Deputy of the Palm Beach County Sheriff's Department for nearly fifty (50) years, spoke about the need for treatment, a program he started called "Another Way", and his support of this professional organization.

Brad Currie, Engineering Design & Construction, presented on the facility.

Applicant, Jason Ackner, a Martin County resident, gave a presentation with specifics and clarified misinformation that had been disseminated. Provided facility details, insurance, and scholarship information that assists with homeless issues.

Commissioners briefly reviewed and discussed the number of beds, calls, and the facility layout.

PUBLIC COMMENT:

1. Dr. Karen Dodge; Port St. Lucie; A Doctor of this Rehab facility, commented on the statistics of number of beds in facilities and the treatments; in favor of the project.
2. Cynthia Coprash - Stuart; Opposed to the project; concerned about the number of beds and homeless after treatment.
3. James Gordon - Boca Raton; Commented that he is an addict who struggled with opioid addiction and received treatment; in favor of project.
4. Dr. Sofia Georgaoulis - Port St. Lucie; Doctor of substance abuse; advocated for treatment; in favor of project.
5. Louisa Levy - Stuart; Learned a lot from presentations and posed questions to be considered. Feels there is a real need for mental health.
6. Michael Craig - Stuart; Commented on zoning changes; opposed to project.
7. Cynthia Wroble - Stuart; Concerned about the facility being close to her elderly parents.
8. Barbara Pettit - Stuart; Commented at the LPA, lives within 300 feet of the proposed project; expressed concerns; opposed to project.
9. Rich Pettit - Stuart; Stated he lives close to proposed rehab, concerned about the land use change; opposed to the project.
10. Douglas Ashley - Jensen Beach; Commented that with all the numbers presented tonight; it's confusing; encouraged the commission to do their homework.
11. Harriet Shapiro - Stuart; Has office near proposed facility and concerned about her safety; opposed to the project.

Applicant, Jason Ackner, addressed points made by the public.

8:20 PM MOTION: Approval to close the hearing.

MOVED BY: Troy McDonald

SECONDED BY: Campbell Rich

Motion approved unanimously.

DISCUSSION AND DELIBERATION

ADJOURNMENT

8:21 PM

Mary R. Kindel, City Clerk

Rebecca S. Bruner, Mayor

**Minutes to be approved at the Regular Commission
Meeting this 28th day of May, 2024.**

CITY OF STUART, FLORIDA

AGENDA ITEM REQUEST

City Commission

Meeting Date: 5/28/2024

Prepared by: Lee Baggett, Ben Hogarth

Title of Item:

SUPPORTING A PETITION FROM THE CBD TO THE EPA ON WATER QUALITY STANDARDS FOR CYANOTOXINS (RC):

RESOLUTION No. 34-2024; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR TO ENDORSE A PETITION FROM THE CENTER FOR BIOLOGICAL DIVERSITY (CBD) REQUESTING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) TO ESTABLISH NEW HUMAN HEALTH WATER QUALITY CRITERIA FOR CYANOTOXINS IN THE STATE'S CLASS I, II, AND III SURFACE WATERS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

During the May 13, 2024, City Commission Meeting, the City Manager informed the City Commission of a request from Friends of the Everglades for the City to endorse a Petition from the Center for Biological Diversity to the U.S. Environmental Protection Agency (EPA). The City Commission unanimously approved the sending of a letter of support by the Petition filing deadline of May 23, 2024, and requested City staff to return with a formal resolution in support for the May 28th City Commission Meeting. The City would be joining the Sanibel-Captiva Conservation Foundation (SCCF), Calusa Waterkeeper, Friends of the Everglades, and Florida Wildlife Federation as additional Petitioners.

The Petition requests the EPA Administrator within their delegated powers under section 303(c)(4)(B) of the Clean Water Act to establish new human health related water quality standards for cyanotoxins in the State's Class I, Class II, and Class III surface waters. These include waterways that serve potable use, harvesting of shellfish for human consumption, and recreational activities. Prospective changes to federal regulations would apply statewide and set first-time criteria for acceptable limits of cyanotoxins in waters of the State. Cyanotoxins have been evidenced to be harmful to human health and aquatic life and typically occur during Harmful Algal Bloom (HAB) events. The Saint Lucie River and the City of Stuart have been historically affected by HAB events and the rapid die-off of cyanobacteria (blue-green algae), which in turn, release harmful cyanotoxins in the waterway, threatening human, animal, and aquatic life.

In 1948, the U.S. Congress adopted the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387) and later amended through substantial reform in 1972 by way of the Clean Water Act (CWA). The Act established a basic structure for regulating pollutant discharges in the Waters of the United States (WOTUS) and gives EPA the authority to implement and enforce pollution control programs and policies. Standards established by further rulemaking through the years have led to the implementation of Basin Management Action Plans (BMAP) in Florida and regulatory restrictions of onsite pollution runoff. The Petition requests the EPA to add cyanotoxin criteria that would apply to waters of the State of Florida, which are not currently regulated.

Funding Source:

N/A

Recommended Action:

Motion approval of Resolution No. 34-2024

ATTACHMENTS:

1. R34-2024 Supporting a Petition from the CBD to the U.S. EPA on Water Quality Standards for Cyanotoxins
2. R34-2024 EPA Support Letter
3. R34-2024 DRAFT EPA Petition 51024



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 34-2024

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR TO ENDORSE A PETITION FROM THE CENTER FOR BIOLOGICAL DIVERSITY REQUESTING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) TO ESTABLISH NEW HUMAN HEALTH WATER QUALITY CRITERIA FOR CYANOTOXINS IN THE STATE'S CLASS I, II, AND III SURFACE WATERS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City of Stuart is a downstream community abutting the Saint Lucie River which has suffered decades of environmental, ecological, and environmental damage during harmful freshwater discharge events; and

WHEREAS, freshwater discharges from Lake Okeechobee are typically laden with pollution from nutrients such as nitrogen and phosphorus promulgating blue-green algae growth, which release cyanotoxins that have been found to be harmful to human, animal, and aquatic life; and

WHEREAS, the proliferation of Harmful Algal Blooms (HAB) in the natural environment has incurred massive ecological die-off events in surface waters such as the Saint Lucie River and Caloosahatchee River, and is also evidenced to be an emergent issue across the globe; and

WHEREAS, the Center for Biological Diversity has drafted a Petition to the U.S. Environmental Protection Agency (EPA) to establish federal regulations applicable to the State of Florida that set new human health water quality criteria for cyanotoxins in the State's Class I, II, and III surface waters; and

WHEREAS, under Section 303(c)(4)(B) of the Clean Water Act (CWA), the EPA Administrator has the authority to make a determination that a new standard for cyanotoxins is necessary to meet the requirements of the CWA; and

WHEREAS, bifurcating regulatory parameters of cyanotoxins from existing nutrient pollution would enable state and federal agencies to focus their enforcement and policymaking on criteria that directly impact human health; and

WHEREAS, the Petition from the Center of Biological Diversity has been endorsed by the Sanibel-Captiva Conservation Foundation (SCCF), Calusa Waterkeeper, Friends of the Everglades, and Florida Wildlife Federation; and

WHEREAS, the City Commission of the City of Stuart believes that the establishment of new federal standards for cyanotoxins in the surface waters of the State serves a critical public purpose and is necessary in enforcing the requirements of the CWA.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The City Commission of the City of Stuart, Florida authorizes the Mayor to sign on behalf of the City of Stuart, a Petition from the Center for Biological Diversity to the United States Environmental Protection Agency requesting the agency make a determination to establish new human health related water quality standards for cyanotoxins in the State's Class I, II, and III surface waters.

SECTION 2: Upon the Mayor's endorsement and execution by the City Clerk, the letter of support shall be transmitted to the Center for Biological Diversity for its use in the joint Petition to the U.S. EPA for the public purposes stated herein.

SECTION 3: This resolution shall take effect upon adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption.

The motion was seconded by Commissioner _____ and upon being put to a roll call vote,

the vote was as follows:

REBECCA S. BRUNER, MAYOR
CAMPBELL RICH, VICE MAYOR
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2024.

ATTEST:

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

LEE J. BAGGETT, ESQ.
CITY ATTORNEY



City of Stuart

Rebecca S. Bruner, Mayor
121 SW Flagler Avenue
Stuart, Florida 34994
Phone: 772.288.5312

May 21, 2024

Friends of the Everglades
3727 SE Ocean Boulevard
Suite 200
Stuart, FL 34996

Re: Support for Petition to the EPA

Dear Sir or Madam:

It is my pleasure to write to you on behalf of the City of Stuart expressing the City's support for your petition requesting the Environmental Protection Agency make a determination establishing new federal regulatory standards to obtain acceptable levels of cyanotoxins in surface waters of the state, pursuant to the requirements of the Clean Water Act.

As you know, our community and inland waterways like the Saint Lucie Estuary have been adversely impacted for decades as a direct result of freshwater discharges from Lake Okeechobee. During many of these events, cyanotoxins resulting from Harmful Algal Blooms have wrought destructive consequences for the health of our community and environment. In support of the aforementioned changes to federal and state regulations of cyanotoxins, the City Commission has authorized me to endorse your joint petition to the Environmental Protection Agency on this critical issue.

Thanking you for your attention to this matter.

Sincerely,

Rebecca S. Bruner
Mayor of the City of Stuart

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

Petition for Rulemaking)
Under the Clean Water Act)
)
Water Quality Criteria for Cyanotoxins)
in the State of Florida)

I. INTRODUCTION

The Center for Biological Diversity (“Center”), hereby petitions the U.S. Environmental Protection Agency (“EPA”) to promulgate federal regulations applicable to the State of Florida, setting forth new human health water quality criteria for cyanotoxins in the state’s Class I, II, and III surface waters. **Sanibel-Captiva Conservation Foundation (“SCCF”), Calusa Waterkeeper, Friends of the Everglades, and Florida Wildlife Federation** join the Center in this petition.

We respectfully request that the Administrator invoke their authority under section 303(c)(4)(B) of the Clean Water Act (“CWA”) to make a determination that a new standard for cyanotoxins is necessary to meet the requirements of the Clean Water Act. Federal standards are necessary because existing state standards and protocols are inadequate to protect public health from these pollutants. EPA must move swiftly amid state inaction and public policy counsels in favor of EPA exercising its authority when the state does not uphold its end of the bargain under the Act’s framework of “cooperative federalism.”

If there was ever the time for the EPA to determine that a new water quality standard is necessary to protect human health from harmful cyanobacteria blooms, it is now. Over the past two decades, Florida has experienced a proliferation of harmful algal blooms (“HABs”) that, as recently as last summer, have been so massive that they can be observed from space.¹ These blooms have killed and injured wildlife, made people sick, and damaged local economies throughout the state. Domestic, industrial, and agricultural wastes, coupled with rising temperatures and changes in precipitation driven by climate change, are contributing to the increased frequency and magnitude of HABs and the production of cyanotoxins.² Water management decisions and operations further exacerbate HABs by interrupting natural flows and discharging algae-laden water into sensitive brackish estuaries and coastal marine waters. This is

¹ NASA. Earth Observatory. Algal Bloom in Lake Okeechobee, at <https://earthobservatory.nasa.gov/images/151581/algae-bloom-in-lake-okeechobee>.

² Rastogi, R.P., D. Madamwar, and A. Incharoensakdi. 2015. Bloom dynamics of cyanobacteria and their toxins: environmental health impacts and mitigation strategies. *Front. Microbiol.* 17 <https://doi.org/10.3389/fmicb.2015.01254>

perhaps most evident in Lake Okeechobee, the “liquid heart” of America’s Everglades, where the U.S. Army Corps of Engineers often discharges billions of gallons of nutrient- and algae-laden water to the Caloosahatchee and St. Lucie Estuaries. Yet, the Corps can only do so much as water quality is primarily the state’s responsibility under the Clean Water Act, subject to EPA oversight.³ Unfortunately, as water quality continues to deteriorate and the climate becomes increasingly hotter, the damaging effects of these blooms to water quality, fisheries, recreation, economies, human health, and animals are only expected to increase.⁴

Concerned about the harm caused by cyanotoxins and no doubt keenly aware of the events unfolding in Florida over the past decade, the EPA released health advisory values for algal toxins in drinking water in 2015,⁵ issued draft recommended human health recreational ambient water quality guidelines for the cyanotoxins microcystin and cylindrospermopsin in 2016,⁶ and published final recommended values for these cyanotoxins in recreational waters in 2019.⁷ These values are intended to guide states in adopting their own water quality standards. **It is worth noting that EPA took these actions under two different administrations.**

Microcystins are the most common cyanotoxins found worldwide and have been reported in surface waters in most states.⁸ Environmental factors such as nutrient load, increased water temperature, salinity, pH, light intensity, and reduced mixing provide competitive advantages to *Microcystis* relative to other phytoplankton.⁹ This cyanotoxin thrives in warmer temperatures.¹⁰ *Cylindrospermopsin* can be produced by several cyanobacteria species and the highest concentrations tend to occur below the surface water.¹¹ Consequently, visible surface scums are not an accurate measure of their presence in the water column.¹²

³ See 33 U.S.C. § 1313.

⁴ Preece, E.P., F.J. Hardy, B.C. Moore, and M. Bryan. 2017. A Review of microcystin detections in estuarine and marine waters: environmental implications and human health risk, *Harmful Algae* 61: 31-45.

⁵ EPA, EPA Issues Health Advisories to Protect Americans from Algal Toxins in Drinking Water (May 6, 2015), at <https://archive.epa.gov/epa/newsreleases/epa-issues-health-advisories-protect-americans-algal-toxins-drinking-water.html>.

⁶ U.S. Environmental Protection Agency. 2016. Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin, Draft. (EPA 2016).

⁷ U.S. Environmental Protection Agency. 2019. Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin. (EPA 2019), at <https://www.epa.gov/sites/default/files/2019-05/documents/hh-rec-criteria-habs-document-2019.pdf>; EPA, Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin, Notice of Availability, 84 Fed. Reg. 26413-26414 (June 6, 2019).

⁸ EPA (2016) at 25.

⁹ *Id.* at 15.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² *Id.* at 1, 5.

On May 23, 2019, Petitioners Center, SCCF, and Calusa Waterkeeper submitted a petition for rulemaking to the Florida Department of Environmental Protection (“FDEP”) requesting the state to promulgate recreational water quality criteria for the cyanotoxins microcystin and cylindrospermopsin (Exhibit 1). On June 24, 2019, FDEP issued an order granting the petition to initiate rulemaking “to the extent that it seeks the initiation of triennial review rule development process, which the Department has already commenced, and consideration during this process of adopting criteria for microcystins and cylindrospermopsin.” (Exhibit 2). The Center, SCCF, and Calusa Waterkeeper submitted detailed comments to FDEP regarding their triennial review during the public comment period. (Exhibit 3).

Five years later, FDEP has still not completed its review and submitted the results to EPA. (Exhibit 4; Fla. Admin. Register, Vol. 45, No. 62 (Mar. 29, 2019)).¹³ Further, Florida has no water quality criteria for cyanotoxins in surface waters, no drinking water standards for cyanotoxins, and no quantitative guidelines for cyanotoxins in waters used for recreation. In fact, the state does not intend to establish water quality criteria for these cyanotoxins (Exhibit 5), despite EPA’s issuance of Final Recommended Human Health Recreational Ambient Water Quality Criteria and the Florida Blue Green Algae Task Force’s recommendations to adopt such criteria. (Exhibit 6). Instead, it intends to rely on criteria for chlorophyll-a as a “proxy”, despite the numerous inadequacies associated with such an approach (as explained in more detail below).

While FDEP remains listless in its efforts to complete its triennial review—much less develop any water quality protections from cyanotoxins—Florida’s residents, visitors, aquatic ecosystems, and local economies are continually harmed by the toxic effects of widespread harmful algal blooms that have ravished the state due in large part to inadequately managed nonpoint source pollution and a warming climate.¹⁴

This petition is brought pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e), to request EPA to take the following actions: (1) make a determination pursuant to the Clean Water Act, 33 U.S.C. § 1313(c)(4)(B), that new water quality criteria for cyanotoxins are necessary for Florida to protect designated uses; and (2) promulgate federal regulations applicable to Florida, pursuant to 33 U.S.C. § 1313(c)(4), setting forth new water quality criteria for microcystins and cylindrospermopsin, as necessary to meet the requirements of the Act.

II. PETITIONERS

Center for Biological Diversity is a nonprofit, public interest environmental organization dedicated to the protection of imperiled species and the habitat and climate they need to survive.

¹³ See also, FDEP Triennial Review of Water Quality Standards, at <https://floridadep.gov/dear/water-quality-standards/content/triennial-review-water-quality-standards>.

¹⁴ For an in-depth discussion of cyanotoxins, their impacts, and nutrient pollution, please see Petition for Rulemaking, From the Center for Biological Diversity, Sanibel-Captiva Conservation Foundation, and Calusa Waterkeeper to Florida Department of Environmental Protection and Environmental Regulation Commission to Establish Water Quality Standards for Cyanotoxins in Florida Surface Waters (May 23, 2019) (Exhibit 1).

The Center works to secure a future for all species, great or small, hovering on the brink of extinction. The Center also seeks to protect biodiversity and human health from toxic substances while promoting a deep understanding of the inextricable connection between the health of humans and all other species. The Center advances its mission through science, legal action, policy advocacy, creative media, and grassroots campaigning.

The Center has 4,116 members and 95,512 supporters in Florida, including hundreds of members who live in some of the most damaged areas of the state, including in Hendry, Lee, Martin, Okeechobee, Palm Beach, and St. Lucie counties. These areas have been directly impacted by the discharge of cyanobacterial blooms from Lake Okeechobee and the subject of emergency declarations resulting from harmful algae blooms.

Center members, supporters, and staff also engage in water based recreational activities such as fishing, kayaking, canoeing, bird watching, and nature observation on surface waters throughout the state, including Lake Okeechobee, the Caloosahatchee River and the estuary, the St. Lucie River and estuary, and the Indian River lagoon.

Center members have been and continue to be impacted by harmful algal blooms throughout the state. The threat of exposure to cyanobacteria has prevented members and staff from recreating on or near affected waters. One member even developed respiratory issues from what was suspected as continued exposure to cyanobacteria while working on and near the Caloosahatchee River.

Founded in 1967, **Sanibel-Captiva Conservation Foundation (SCCF)** is a 501(c)(3) non-profit organization dedicated to the conservation of coastal habitats and aquatic resources on Sanibel and Captiva and in the surrounding watershed.

SCCF is the largest private landowner on Sanibel Island. The organization manages more than 1,200 acres on Sanibel and more than 600 acres on surrounding islands. SCCF has facilitated the acquisition and fundraising for an additional 470 acres currently managed by the State of Florida and the U.S. Fish and Wildlife Service. Some of SCCF's properties have public access hiking trails. SCCF also has a native landscapes and garden center.

For over fifty years, SCCF has maintained several program areas, including: wildlife and habitat management, sea turtle research and monitoring, environmental education, natural resource policy, and a marine research laboratory. SCCF members, staff, and board of directors also frequently boat, fish, kayak and engage in other recreational activities in and around Pine Island Sound and the Caloosahatchee River and Estuary.

SCCF members, staff, and volunteers have all been impacted by the algae blooms in the Caloosahatchee River and Estuary. During the algal blooms of 2018, members could not use these waters to recreate due to cyanotoxins being present and those members who live on or in close proximity to the Caloosahatchee River were also unable to recreate and enjoy their waterfront properties in fear of the health issues that accompany exposure to cyanotoxins.

Calusa Waterkeeper, Inc. is a Florida non-profit organization, with more than 300 members, dedicated to the protection of the Caloosahatchee River and Estuary from Lake Okeechobee to the

coastal waters.

Calusa Waterkeeper began in 1995 as Caloosahatchee River Citizens Association, Inc. Calusa Waterkeeper was admitted to the Waterkeeper Alliance in 2015 as an affiliate organization and in December 2016, became a full member in Waterkeeper Alliance,¹⁵ adopting the new name Calusa Waterkeeper, Inc.

Calusa Waterkeeper members advocate for the protection of the Caloosahatchee River as their recreational and business interests, as well as their quality of life, are being directly affected by cyanobacteria blooms. Several members have experienced health effects from exposure to cyanotoxins and the threat of being exposed to cyanotoxins have prevented Calusa Waterkeeper members from participating in environmental programs within and along waters impacted by the cyanobacteria blooms.

Founded in 1969 by writer and advocate Marjory Stoneman Douglas, **Friends of the Everglades** ("Friends") is a 501(c)(3) non-profit dedicated to preserving, protecting, and restoring the only Everglades in the world. Friends has three strategic goals:

1. Compel government agencies to comply with existing environmental laws, and resist any efforts to weaken such laws.
2. Encourage politicians to recognize the long consequences of their actions.
3. Spread awareness of the importance of the Everglades to the South Florida ecosystem.

The organization advances its mission and goals through grassroots advocacy, scientific research, litigation, and public outreach and education. Over the years, Friends has waged successful Clean Water Act litigation to enforce pollution limits in the Everglades.

Friends of the Everglades has more than 29,000 supporters, many of whom reside near or recreate in waterways and wetlands of the Greater Everglades region. In 2019, Friends of the Everglades moved its headquarters from Miami to Stuart, Florida, a community on the front lines of recurring cyanobacteria blooms that are fueled by nutrient-laden discharges from Lake Okeechobee to the St. Lucie River and Indian River Lagoon. Friends is deeply engaged in advocacy to improve water management and water quality in order to safeguard public health and environmental resources across the Greater Everglades.

Founded in 1936, the **Florida Wildlife Federation, Inc.** (Federation) is a private, statewide, non-profit citizens' conservation education organization dedicated to protecting and conserving Florida's iconic species, wild places, and water resources.

¹⁵ Waterkeeper Alliance is a 501(c)(3) nonprofit organization dedicated to protecting and restoring the nation's waterways through enforcement, fieldwork, advocacy and environmental education for the benefit of communities that rely on these precious inland and coastal resources. Waterkeeper Alliance unites more than 300 waterkeeper organizations and affiliates. These organizations and affiliates patrol and protect more than 2.5 million square miles of rivers, lakes, and coastal waterways on six continents. Waterkeeper Alliance has 13 membership organizations overseeing separate water basins throughout Florida.

The Federation's mission is to conserve Florida's wildlife, habitats, and natural resources through education, advocacy, and science-based stewardship. Statewide, over 35,000 members and supporters are active participants in protecting, restoring, and connecting our remaining wildlife habitats, safeguarding water quality and quantity, and addressing ongoing climate change.

For over eight decades, the Federation has been at the forefront of efforts to conserve and protect Florida's iconic species, wild places, and precious natural resources. With a diverse coalition of supporters, the Federation empowers Floridians to act on the most pressing issues facing the health and sustainability of our wildlife and habitats.

The Federation's members, supporters, and staff have been and continue to be impacted by harmful algal blooms throughout the state, specifically related to the waterbodies of the St. Lucie, St Johns, and Caloosahatchee Rivers and Lake Okeechobee. As a recreation and conservation-focused organization, the environmental and public health implications of harmful algal blooms jeopardize the ability of the Federation's members, supporters, and staff to participate in recreational activities that connect them with Florida's land, water, and fish and wildlife.

Accordingly, Petitioners have a substantial interest¹⁶ in a rule establishing water quality standards for cyanotoxins, which would help protect people (including the Petitioners' members) from recreational exposure to these harmful constituents. By promulgating water quality criteria for cyanotoxins, the EPA would establish clear numeric baselines for Florida's waters, which are used as sources of drinking water, places to recreate, areas to propagate and harvest shellfish, and habitat for the state's abundant and diverse wildlife. These criteria would form the basis of water quality monitoring and help identify which waters are impaired by cyanotoxins. Routine monitoring (not dependent on the observation of a bloom) would also provide state environmental and health officials with critical information to notify the public of the health and safety risks of recreating in waters with high cyanotoxin levels.

By setting numeric limits, Florida will be able to identify waters impaired by cyanotoxins and develop better total maximum daily loads (TMDLs), basin management action plans (BMAPs), best management practices (BMPs), and other nonpoint source controls to specifically prevent HAB outbreaks. Establishing these water quality criteria would further help optimize watershed planning, protection, and restoration in watersheds like Lake Okeechobee, the St. Lucie River and Estuary, Caloosahatchee River and Estuary, St. Johns River, and Lake Worth Lagoon by establishing a specific performance measure that is tied to protecting human health through primary contact recreational exposure, as well as fish and wildlife and the aquatic environment. These protections would in turn help protect and restore the waters the Petitioners and their members advocate for, use, and enjoy.

¹⁶ See 5 U.S.C. § 553(e)(providing an "interested person" the right to petition for the issuance, amendment, or repeal of a rule"). "Person" includes an individual, partnership, corporation, association, or public or private organization other than an agency." *Id.* § 551(2).

III. LEGAL FRAMEWORK

A. Clean Water Act

Congress passed the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”¹⁷ The Clean Water Act provides a comprehensive framework for protecting our nation’s water quality from both point source¹⁸ and nonpoint source pollution.¹⁹

This framework turns in large part on the implementation of water quality standards. To that end, Section 303 of the Act directs states, subject to EPA approval, to develop and enforce comprehensive water quality standards establishing water quality goals for all intrastate waters.²⁰ These standards must “protect the public health or welfare, enhance the quality of water and serve the purposes of the [Clean Water Act].”²¹

Water quality standards are central to the design and plan of the Clean Water Act and are at the heart of each strategy of pollution control under the Act. A water quality standard “defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses.”²² Uses are typically specified as part of a classification system, with the highest class consisting of potable water supplies.²³ The Clean Water Act requires that the classification system provide water quality for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water where attainable.²⁴ Any existing use and water quality necessary to continue supporting that use must also be protected and maintained.²⁵ Criteria then build on these “uses,” fleshing out state water quality standards. These criteria may be expressed as numerical constituent concentrations, narrative statements, or both,²⁶ and represent a quality of water that supports a

¹⁷ 33 U.S.C. § 1251(a).

¹⁸ A “point source” is “any discernable, confined and discrete conveyance... from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

¹⁹ Non-point source pollution is “the type of pollution that arises from many dispersed activities or large areas, and is not traceable to any single discrete source.” *Nw. Env’tl. Def. Ctr. v. Brown*, 640 F.3d 1063, 1080 (9th Cir. 2011).

²⁰ 33 U.S.C. §§ 1311(b)(1)(C), 1313; *PUD No. 1 of Jefferson Cty v. Washington Dept. of Ecology*, 511 U.S. 700, 704 (1994).

²¹ 40 C.F.R. § 131.2. *See also* 33 U.S.C. § 1313(c)(2)(A).

²² 40 C.F.R. § 131.2 (emphasis added).

²³ *See* Fla. Admin. Code. R. 62-302.400 (listing seven classes of water in Florida with associated designated uses).

²⁴ 40 C.F.R. § 130.3.

²⁵ *See id.* § 131.10(h)(1) (stating that a state may not remove an existing use unless it replaces it with more stringent criteria).

²⁶ *Id.* § 131.11(b)

particular use.²⁷ States are encouraged to adopt numeric values based on EPA guidance²⁸ and water quality criteria must “accurately reflect[] the latest scientific knowledge.”²⁹ “Water quality standards play an important role in maintaining and improving the cleanliness and safety of the nation’s waterbodies, because they are designed to determine which waterbodies are safe enough to support their designated uses.”³⁰

In addition to identifying designated uses and establishing criteria to protect these designated uses, states must also develop and adopt a statewide anti-degradation policy and identify the methods for implementing such a policy as part of their state water quality standards.³¹ Pursuant to Florida’s “antidegradation” policy, “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.”³²

When criteria are met, water quality will generally protect the designated use.³³ EPA regulations require states to “adopt those water quality criteria that protect the designated use” and that such criteria “must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.”³⁴ “In designating uses of a waterbody and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”³⁵

States are required to review their water quality standards at least once every three years and if appropriate, revise or adopt new standards.³⁶ This is known as the “triennial review” process. The process requires public participation, and the state must submit the results of the review, any supporting analysis for the use-attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards, and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final state action to adopt and certify the revised standard. If no revisions are made as a result of the review, the state must submit its results within 30 days of the completion of the Review.³⁷ “In addition, if a State does not adopt new or revised criteria for parameters for which

²⁷ *Id.* § 131.11(a). Water quality criteria can include various types of parameters to support both a designated and existing use, including for example, minimum water flows. *See PUD No. 1 of Jefferson Cty*, 511 U.S. 700.

²⁸ *See id.* § 131.6.

²⁹ 33 U.S.C. § 1314(a)(1).

³⁰ *Fla. Pub. Interest Research Group Citizen Lobby, Inc. v. EPA*, 386 F.3d 1070, 1074 (11th Cir. 2004).

³¹ *See* 40 C.F.R. § 131.12(a).

³² *Id.* § 131.2(a)(2) (emphasis added).

³³ *Id.* § 131.3(b).

³⁴ *Id.* § 131.11(a)(1).

³⁵ *Id.* § 130.10(b). States must develop and adopt a statewide anti-degradation policy and identify the methods for implementing such a policy as part of their state water quality standards. *See* 40 C.F.R. § 131.12(a).

³⁶ 33 U.S.C. § 1313(c)(1).

³⁷ 40 C.F.R. § 131.20 (b) and (c).

EPA has published new or updated CWA section 304(a) criteria recommendations, then the State shall provide an explanation when it submits the results of its triennial review to the Regional Administrator...”³⁸

Any new or revised water quality standards must be submitted to EPA for review and approval or disapproval.³⁹ After the state submits its officially adopted revisions, the Regional Administrator shall either: 1) notify the State within 60 days that the revisions are approved, or (2) notify the State within 90 days that the revisions are disapproved.⁴⁰ If the EPA disapproves of a state’s revisions, the notification must specify the changes needed to ensure compliance with the requirements of the Act and the implementing regulations, and explain why the State standard is not in compliance with these requirements.⁴¹ Any new or revised State standard must be accompanied by supporting analysis.⁴² If the State does not adopt the changes specified by the Regional Administrator within 90 days after notification of disapproval, the Administrator must promptly propose and promulgate such standard.⁴³

EPA may determine, even in the absence of a state submission, that a new or revised standard is needed to meet the requirements of the Clean Water Act.⁴⁴

33 U.S.C. § 1313(C)(4) provides in full:

The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved-

(A) If a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) In any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.⁴⁵

Under the implementing regulations, this determination must be signed by the Administrator, or his or her duly authorized delegate, and contain a statement that the document constitutes an Administrator’s determination under section 303(c)(4)(B) of the Act.⁴⁶ “In promulgating water quality standards, the Administrator is subject to the same policies, procedures, analyses, and

³⁸ 40 C.F.R. § 131.20(a).

³⁹ 33 U.S.C. § 1313(c)(2)(A).

⁴⁰ 40 C.F.R. § 131.21 (a)(1)-(2).

⁴¹ *Id.* § 131.21 (a)(2).

⁴² *Id.* The Regional Administrator’s approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in 40 C.F.R. §§ 131.5 and 131.6. 40 C.F.R. § 131.21(b).

⁴³ 40 C.F.R. § 131.22(a).

⁴⁴ 33 U.S.C. § 1313(c)(4)(B); 40 C.F.R. 131.22(b).

⁴⁵ *Id.* (emphasis added).

⁴⁶ 40 C.F.R. § 131.22(b)(1)-(2).

public participation requirements established for States in these regulations.”⁴⁷ The Administrator has exercised their discretion to issue section 303(c)(4)(B) necessity determinations on several occasions.⁴⁸

Thus, while states play a lead role in establishing water quality standards, “EPA serves as a backstop.”⁴⁹ As the Court in explained in *Northwest Environmental Advocates v. U.S. Env’tl. Prot. Agency*:

Not only does EPA have to review state-adopted WQS, but it must also ‘promptly prepare and publish’ new WQS for a state ‘in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.’ **While this ‘necessity determination’ is discretionary, it exists to ensure EPA has a mechanism to meet the CWA’s goals to protect and enhance water quality where a state fails to uphold its part of the bargain.**⁵⁰

B. APA

Under the Administrative Procedure Act (“APA”), interested persons have the right to petition for the “issuance, amendment, or repeal” of an agency rule.⁵¹ A “rule” is the “whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.”⁵²

After receiving a petition for rulemaking, the EPA must consider the petition “within a reasonable time,”⁵³ which courts have found is “typically counted in weeks or months, not

⁴⁷ 40 C.F.R. § 131.22(c).

⁴⁸ See EPA, Proposed Rule, Water Quality Standards to Protect Aquatic Life in the Delaware River, 88 Fed. Reg. 88315, 88336 (Dec. 21, 2023); EPA, Final Rule, Water Quality Standards for the State of Florida’s Lakes and Flowing Waters, 75 Fed. Reg. 75,762, 75,763, 75,711 (Dec. 6, 2010); EPA, Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 65 Fed. Reg. 31,682, 31,687 (May 18, 2000); EPA Decision Letter on New Water Quality Standards for St. Louis Segment of the Mississippi River from Peter S. Silva, U.S. Env’tl. Prot. Agency, Assistant Adm’r for Water, to Mark N. Templeton, Dir. MO Dep’t of Nat. Res. (Oct. 9, 2002); EPA, Final Rule, Water Quality Standards for the Colville Indian Reservation in the State of Washington, 54 Fed. Reg. 28,622, 28,624 (July 6, 1989); EPA, Final Rule, Water Quality Standards for the Surface Waters of the Commonwealth of Kentucky, 52 Fed. Reg. 9102, 9102-03 (Mar. 20, 1987).

⁴⁹ *Northwest Environmental Advocates v. U.S. Env’tl. Prot. Agency*, 577 F. Supp. 3d 1190, 1198 (W.D. Wash.), vacated in part by, *Northwest Env’t Advocates v. U.S. EPA*, 2022 U.S. Dist. LEXIS 160035, 2022 WL 3867419 (W.D. Wash. Aug. 30, 2022)(granting joint motion to amend and modifying the Court’s December 29, 2021 Order on Cross-Motions for Summary Judgment).

⁵⁰ *Id.* at 1198-99. (emphasis added).

⁵¹ 5 U.S.C. § 553(e).

⁵² *Id.* § 551(4).

⁵³ *Id.* § 555(b).

years.”⁵⁴ In addition, “prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding.”⁵⁵

Petitioners can challenge an agency’s refusal to promulgate rules under Section 706(2)(A) of the APA.⁵⁶ This includes a decision by EPA to deny a petition for rulemaking under section 303(c)(4)(B) of the Clean Water Act.⁵⁷

IV. EPA’S RECOMMENDED CRITERIA FOR CYANOTOXINS

In consideration of the human health effects of cyanotoxins resulting from recreational exposure, EPA in 2016 published draft recommended values for microcystins and cylindrospermopsin under section 304(a) of the Clean Water Act for states to consider as the basis for swimming advisories for notification purposes in recreational waters to protect the public.⁵⁸ In developing these recommended values, EPA noted that states may also consider using these values when adopting new or reviewed water quality standards.⁵⁹ The EPA explained that if adopted as water quality standards and approved by the agency under section 303(c) of the Clean Water Act, these water quality standards could be used for all Clean Water Act purposes.⁶⁰ States could also use these values as both swimming advisory values and/or water quality standards.⁶¹ EPA envisioned that if states decided to use the values as swimming advisory values they would do so in a manner similar to their current recreational water advisory programs.⁶²

Based on available noncancer health effects information,⁶³ EPA recommended values protective of primary contact recreation for microcystins at 4 micrograms per liter and for cylindrospermopsin at 8 micrograms per liter.⁶⁴ The values are based on overall exposure to children at the 90th percentile.⁶⁵ If used as a swimming advisory to protect swimmers at a beach, the values are not to be exceeded on any single day.⁶⁶ If used as water quality criteria for assessment and listing purposes, EPA recommended that states consider the number of exceedances of no more than 10 percent of days per recreational season up to one year.⁶⁷

⁵⁴ *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

⁵⁵ 5 U.S.C. § 555(e).

⁵⁶ *See Massachusetts v. EPA*, 549 U.S. 497, 527, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007).

⁵⁷ *See Gulf Restoration Network v. McCarthy*, 783 F.3d 227, 232-42 (5th Cir. 2015); *Nw. Envtl. Advocates v. United States EPA*, 2021 U.S. Dist. LEXIS 102761 (W.D. Wash. June 1, 2021)

⁵⁸ EPA (2016) at 1.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ EPA concluded that for microcystins and cylindrospermopsin that there was inadequate information at the time to assess carcinogenic potential of cyanotoxins. EPA may revise its recommendations if additional information becomes available. *Id.* at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

On May 22, 2019, EPA issued its final recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin.⁶⁸ EPA's final recommended values are 8 µg/L for microcystins and 15 µg/L for cylindrospermopsin.⁶⁹ EPA published these recommended values under Section 304(a) of the Clean Water Act for states to consider as the basis for swimming advisories for notification purposes in recreational waters to protect the public.⁷⁰ States may also consider using these values when adopting new or revised water quality standards.⁷¹

Although a state is not required to adopt new or revised criteria for parameters for which EPA has published new or updated CWA section 304(a) criteria recommendations, the state must provide an explanation for not adopting the criteria when it submits the results of its triennial review to the Regional Administrator of the EPA consistent with Section 303(c)(1) of the Clean Water Act and the requirements of 40 C.F.R. §131.20(c).⁷² As explained earlier, Florida has neither completed its triennial review, nor has it explained to EPA why it will not adopt criteria for cyanotoxins.

Despite inaction by the State of Florida, other states severely impacted by HABs are taking action to protect their residents and visitors from cyanotoxins. As of 2019, twenty-one states have implemented HAB response guidelines in the event of a significant bloom in recreational waterways. These include specific criteria for analyzing the severity of a bloom and the actions—public advisories, posted warnings, waterway or beach closures, among others—that correspond to a bloom that meets a certain threshold.⁷³ Since then, it appears more states have implemented HAB response guidelines, with twenty-six states using cyanotoxin guidance values for microcystins as a basis for issuing advisories according to a 2021 survey.⁷⁴ California, Illinois, Indiana, Iowa, Kansas, Massachusetts, Nebraska, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Vermont, Virginia, and Washington, all have a numeric component of their recreational water guidelines that require their respective state environmental and public health agencies to issue alerts, advisories, and closures.⁷⁵ For example, in Virginia, the presence of a blue-green algal scum or mat on the water surface *or* the presence of microcystin levels above 6 ppb, triggers a series of actions including immediate public notification and weekly sampling.⁷⁶

In addition to these recommended recreational water quality criteria for cyanotoxins, in 2015, the EPA released health advisory values for algal toxins in drinking water.⁷⁷ Health advisory values

⁶⁸ EPA (2019).

⁶⁹ *Id.* at 16-17.

⁷⁰ *Id.* at 4.

⁷¹ *Id.*

⁷² 40 C.F.R. § 131.20(a).

⁷³ EPA, Guidelines and Recommendations, at https://19january2017snapshot.epa.gov/nutrient-policy-data/guidelines-and-recommendations_.html.

⁷⁴ Hardy, F. Joan, Preece, E. and Backer, L. 2021. Status of state cyanoHAB outreach and monitoring efforts, United States, Lake Reserv. Manag. 2021 Feb; 37(3): 246-260.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ EPA, EPA Issues Health Advisories to Protect Americans from Algal Toxins in Drinking Water (May 6, 2015), at <https://archive.epa.gov/epa/newsreleases/epa-issues-health-advisories-protect-americans-algal-toxins-drinking-water.html>.

identify the concentration of a contaminant in drinking water at which adverse health effects are not expected to occur over specific exposure deadlines (e.g. ten-days).⁷⁸ They serve as information technical guidance for Federal, State, and local governments and water system managers in protecting public health when emergency spills or contamination events occur.⁷⁹ Health advisory values provide information on the environmental properties, health effects, analytical methodology, and treatment for removal of drinking water contaminants.⁸⁰ There are health advisory values for more than 200 contaminants.⁸¹

Citing gastroenteritis and liver and kidney damage as potential health effects from longer exposure to higher levels of algal toxins in drinking water, the EPA recommended 0.3 micrograms per liter for microcystin and 0.7 micrograms per liter for cylindrospermopsin as levels not to be exceeded in drinking water for children younger than school age.⁸² These health advisory values are based on exposure for ten days.⁸³

Florida similarly lacks any standards or guidelines for cyanotoxins in drinking water.⁸⁴ In contrast, as of 2019, several states have implemented guidance values including Minnesota, Ohio, Oregon, and Vermont. Ohio, which like Florida, experiences some of the most widespread and harmful blooms in the country, has explicit “do not drink” action levels for several cyanotoxins, including microcystin and cylindrospermopsin.⁸⁵ Oregon and Ohio have had health advisories for cyanotoxins in drinking water since 2011. Comparatively, Florida indicated in response to a 2021 survey that it does not have a state outreach program to address cyanotoxin exposure in drinking water.⁸⁶

V. CYANOBACTERIA BLOOMS HAVE CAUSED WIDESPREAD HARM THROUGHOUT THE STATE.

Harmful algae blooms have inflicted damage across Florida, from the St. Johns River to Florida Bay. In 2005, a *Microcystis* bloom in the Lower St. Johns River covered a 100-mile stretch from

⁷⁸ EPA. 2015. Drinking Water Health Advisory for the Cyanobacterial Microcystin Toxins, EPA Doc. Number 820R15100, p. 3, June 15, 2015, at <https://www.epa.gov/sites/default/files/2017-06/documents/microcystins-report-2015.pdf>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² EPA News Release, at <https://archive.epa.gov/epa/newsreleases/epa-issues-health-advisories-protect-americans-algal-toxins-drinking-water.html>.

⁸³ *Id.*

⁸⁴ It also appears that Florida does not enforce EPA health advisories for cyanotoxins in drinking water, leaving it up to the public utility to decide their own policy. *See* American Water Works Association, Cyanotoxins in US Drinking Water: Occurrence, Case Studies and State Approaches to Regulation (Sep. 2016).

⁸⁵ EPA, Guidelines and Recommendations, at https://19january2017snapshot.epa.gov/nutrient-policy-data/guidelines-and-recommendations_.html.

⁸⁶ Hardy, F. Joan, Preece, E. and Backer, L. 2021. Status of state cyanoHAB outreach and monitoring efforts, United States, Lake Reserv. Manag. 2021 Feb; 37(3): 246-260.

Jacksonville to Crescent City.⁸⁷ In 2009, a 14-mile long algal bloom, linked to surface water runoff of nutrients and pollutants, impacted Tampa Bay.⁸⁸ In 2010, algal blooms and fish kills once again hit the St. Johns River.⁸⁹ From 2005-2008 and again in 2013 and 2015, widespread HABs killed marine life throughout Florida Bay.⁹⁰

Some of the largest and most destructive HABs in Florida have occurred in Lake Okeechobee, where they have been documented since the early 1980s but have increased in their frequency, intensity, and duration over the last decade.⁹¹ The lake's shallow depth, along with nutrient runoff and warm water temperatures provide ideal conditions for HABs.⁹² Much of this nutrient and algae-laden water is discharged into the St. Lucie and Caloosahatchee estuaries, resulting in widespread destruction in 2005, 2008, 2013, 2016 and 2018.

In 2005, following several strong tropical storms, toxic *Microcystis aeruginosa* blooms formed in Lake Okeechobee and were discharged downstream into the St. Lucie estuary.⁹³

In mid-June 2008, a toxic blue-green algae bloom occurred north of the Franklin Lock on the Caloosahatchee River and forced the temporary shut-down of the Olga Water Treatment Plant, which obtains its source water from the Caloosahatchee and provides drinking water for 30,000 people.⁹⁴

In 2013, after additional tropical storms, the Corps once again discharged *M. aeruginosa* blooms in Lake Okeechobee into the St. Lucie estuary.⁹⁵ More than 5,000 people attended a rally at Phipps Park and the St. Lucie Locks in Martin County in response.⁹⁶

⁸⁷ See Environmental Protection Agency, Water Quality Standards for the State of Florida's Estuaries, Coastal Waters, and South Florida Inland Flowing Waters, Proposed Rule, 77 Fed. Reg. 74924, 74935 (Dec. 18, 2012).

⁸⁸ See *id.*

⁸⁹ See *id.*

⁹⁰ See Hubbard, K. Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute. 2018. Harmful Algae Blooms and Implications for the Florida Keys, at <https://nmsfloridakeys.blob.core.windows.net/floridakeys-prod/media/docs/20181016-habupdate.pdf>.

⁹¹ Rosen, B. H., T.W. Davis, C.J. Gobler, B.J. Kramer, and K.A. Loftin. 2016. Cyanobacteria of the 2016 Lake Okeechobee and Okeechobee Waterway Harmful Algal Bloom.

⁹² Havens, K. 2013. Deep Problems in Shallow Lakes: Why Controlling Phosphorus Inputs May Not Restore Water Quality. IFAS Extension. University of Florida; Havens, K, et al. 2016. Natural Climate Variability Can Influence Cyanobacteria Blooms in Florida Lakes and Reservoirs. IFAS Extension. University of Florida.

⁹³ Preece, et al. 2017.

⁹⁴ Environmental Protection Agency, Water Quality Standards for the State of Florida's Lakes and Flowing Waters, Final Rule, 75 Federal Register 75762, 75769 (Dec. 6, 2010).

⁹⁵ Preece, et al., 2017.

⁹⁶ See Crystal Vander Weit and Eric Hasert, Photos: A look back at Lake O discharges and toxic algae blooms over the last 20 years, TC Palm, (April 4, 2024), at www.tcpalm.com/picture-

In 2016, a 239-square mile HAB occurred in Lake Okeechobee, during an almost-year long period of releases to the St. Lucie and the Caloosahatchee.⁹⁷ Beaches were closed and then Gov. (now Senator) Rick Scott declared a state of emergency in Martin, St. Lucie, Palm Beach and Lee Counties.⁹⁸

In 2017, heavy rain from Hurricane Irma and above-average rainfall in May 2018 set the stage for possibly the largest ever summer algal bloom in Lake Okeechobee; the Corps discharged toxic algae filled water into the St. Lucie and Caloosahatchee estuaries.⁹⁹ Finding the “release of water from Lake Okeechobee and increase in algae blooms, including overwhelming amounts of cyanobacteria (blue-green algae) which can produce hazardous toxins, has unreasonably interfered with the health, safety, and welfare of the State of Florida and its residents,” Governor Scott again issued a state of emergency, this time in Glades, Hendry, Lee, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.¹⁰⁰

Following these discharges in 2018, researchers collected samples from the Caloosahatchee River at Fort Myers into Pine Island Sound and up to Boca Grande during an extended bloom of *Microcystis spp.* and a bloom of *Karenia brevis* in coastal waters of the Gulf of Mexico that coincided in the Fort Myers Area.¹⁰¹ High concentrations of microcystin-LR, the most toxic of microcystins that can cause liver damage, were detected in a cyanobacteria bloom along with neurotoxic brevetoxins from marine samples.¹⁰² High freshwater flows pushed the cyanobacterial bloom to barrier island beaches and microcystins could be detected in the marine environment at

[gallery/news/2024/04/04/a-look-back-at-toxic-algae-blooms-from-lake-o-discharges-since-2005/73197475007/](https://www.flgov.com/wp-content/uploads/2018/07/EO-18-191.pdf).

⁹⁷ U.S. Environmental Protection Agency. 2016. Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin, Draft, pp. 20, 28 (EPA 2016).

⁹⁸ *Id.* at 29.

⁹⁹ Krinsky, L., Havens, K., and Philips, E. 2018. A response to frequently asked questions about the 2018 Lake Okeechobee, Caloosahatchee and St. Lucie rivers and estuaries algal blooms, University of Florida, IFAS, Blogs, at <http://blogs.ifas.ufl.edu/extension/2018/07/10/algal-blooms-faq/>.

¹⁰⁰ State of Florida, Office of the Governor, Executive Order Number 18-191 (Emergency Management-Lake Okeechobee Discharge/Algae Blooms), (July 9, 2018), available at <https://www.flgov.com/wp-content/uploads/2018/07/EO-18-191.pdf>.

¹⁰¹ Metcalf, J.S., Banack, S.A., Wessel, R.A., Lester, M., Pim, J.G., Cassani, J.R., Cox, P.A. 2020. Toxin Analysis of Freshwater Cyanobacterial and Marine Harmful Algal Blooms on the West Coast of Florida and Implications for Estuarine Environments. Neurotoxicity Research, <https://doi.org/10.1007/s12640-020-00248-3>.

¹⁰² *Id.* See also, National Library of Medicine, PubChem, Microcystin-LR, at <https://pubchem.ncbi.nlm.nih.gov/compound/445434>; Centers for Disease Control and Prevention, Emergency Preparedness and Response, Case Definition: Brevetoxin, at <https://emergency.cdc.gov/agent/brevetoxin/casedef.asp#:~:text=Brevetoxins%20are%20a%20group%20of,oral%20ingestion%20of%20contaminated%20shellfish>.

a salinity of 41 mS/cm.¹⁰³ The research suggested that under certain conditions such as high-water flows, cyanobacteria blooms may extend some distance into marine environments containing detectable cyanotoxins of known health concern.¹⁰⁴ This highlights the potential for multiple, potentially toxic blooms to co-exist in the marine environment.¹⁰⁵

The damaging discharges from Lake Okeechobee in 2005, 2008, 2013, 2016, and 2018 had a significant impact on the ecology of the northern estuaries and inflicted significant economic losses in commercial fishing, recreation tourism, and the real estate sectors.¹⁰⁶ These HABs also sickened and killed family pets,¹⁰⁷ forced local businesses to close,¹⁰⁸ and diminished waterfront property values.¹⁰⁹

Since then, these blooms have only continued. FDEP reported that blooms covered approximately 45% of the Lake in 2022, which was comparable to levels in 2020 and 2021.¹¹⁰ In 2023, Lake Okeechobee experienced a cyanobacteria bloom that covered about 380 square miles (more half the area of the Lake).¹¹¹ The bloom threatened nearby towns¹¹² and the Department of Health issued public health warnings.¹¹³ TCPalm recently published a photo report chronicling the damaging effects of toxic algae blooms and the toll it has taken on local coastal communities over the past twenty years.¹¹⁴

¹⁰³ Metcalf et al. 2020.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ South Florida Water Management District. 2018. Central Everglades Planning Project Post Authorization Change Report: Feasibility Study and Draft Environmental Impact Statement. (SFWMD 2018b).

¹⁰⁷ Treadway, T. 2018. Toxic algae killed east coast dog after contact with St. Lucie River, owner says necropsy reveals, TC Palm (Sept. 17, 2018) at <https://www.naplesnews.com/story/news/environment/2018/09/17/report-shows-dog-killed-toxic-blue-green-algae-st-lucie-river/1339559002/>.

¹⁰⁸ See Hagan, Alex. 2018. Stuart business owner: 'Algae killed us,' Jul. 3, 2018, WPTV, at <https://www.wptv.com/news/region-martin-county/stuart-business-owner-algae-killed-us->.

¹⁰⁹ See Ruane, Laura. 2018. Florida's algae crisis and lingering red tide hurt waterfront home sales, Jul. 13, 2018. Fort-Myers News Press, at <https://www.news-press.com/story/news/2018/07/13/floridas-algae-crisis-and-lingering-red-tide-hurt-home-sales/769673002/>.

¹¹⁰ NASA Earth Observatory, "Blooming Lake Okeechobee," at <https://earthobservatory.nasa.gov/images/150093/blooming-lake-okeechobee>.

¹¹¹ NASA. Earth Observatory. Algal Bloom in Lake Okeechobee, at <https://earthobservatory.nasa.gov/images/151581/algae-bloom-in-lake-okeechobee>.

¹¹² Dan Egan, "It's Toxic Slime Time on Florida's Lake Okeechobee," New York Times (Jul. 9, 2023).

¹¹³ Nathalie Vega, "Inundated with algae, Lake Okeechobee faced a slimy season," Sun-Sentinel (Oct. 9, 2023)

¹¹⁴ Crystal Vander Weit and Eric Hasert, Photos: A look back at Lake O discharges and toxic algae blooms over the last 20 years, TC Palm, (April 4, 2024), at www.tcpalm.com/picture-

Harmful algal blooms are beginning to occur this spring within Lake Okeechobee and the coastal estuaries. According to FDEP's March 22-28, 2024 monitoring report, microcystin levels above the EPA's recommended levels were reported at the St. Lucie Canal-96th Street Bridge (17 ppb) and St. Lucie River-Four Rivers (11 ppb).¹¹⁵ Local news sources are reporting on the situation.¹¹⁶ And like all of FDEP's monitoring reports (as discussed in greater detail below), absent a general disclaimer, the latest reports fail to include any discussion about the human health impacts that might result from levels that exceed EPA's recommended levels of 8 ppb.

A. Recent Monitoring Reports Reflect Widespread Cyanobacteria Blooms Throughout the Year.

The last few years has seen a proliferation of cyanobacteria blooms across the state. Since May 2019, which coincides with the time EPA issued its final recommended criteria for cyanotoxins and Petitioners filed their petition for rulemaking with the State of Florida, DEP has posted weekly blue-green algae bloom updates on its website.¹¹⁷ More recently, these updates have included monitoring reports.¹¹⁸ On numerous occasions, the state reported widespread and sustained algal blooms and cyanotoxin levels that greatly exceeded the 8 micrograms per liter (µg/L) and 15 µg/L (or 8 ppb and 15 ppb)¹¹⁹ EPA recommended criteria for microcystins and cylindrospermopsin, respectively. Below are just some of the results across the state and throughout the seasons, over a nearly five-year period:

- 32.0 ppb (unnamed but presumably microcystins) at the S351 rim canal location on Lake Okeechobee (July 19-July 25, 2019 update)¹²⁰
- **192.9 ppb** total microcystins at Lake Okeechobee-SE, 71.75 ppb at Lake Okeechobee SW, 26.33 ppb at Lake Okeechobee South (August 23-29, 2019 update)¹²¹

[gallery/news/2024/04/04/a-look-back-at-toxic-algae-blooms-from-lake-o-discharges-since-2005/73197475007/](https://www.floridadep.gov/gallery/news/2024/04/04/a-look-back-at-toxic-algae-blooms-from-lake-o-discharges-since-2005/73197475007/).

¹¹⁵ FDEP, Blue-Green Algal Bloom Weekly Update, at

https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20032824.pdf.

¹¹⁶ See Ed Killer, Toxic algae in St. Lucie river and canal are in dangerous concentrations, DEP confirms, TCPalm (March 29, 2024), at www.tcpalm.com/story/news/local/indian-river-lagoon/health/2024/03/29/lake-okeechobee-discharges-bring-toxic-algae-to-st-lucie-river-c-44-canal-dep-water-samples/73143698007/.

¹¹⁷ FDEP, Weekly Updates and Subscriptions, at <https://floridadep.gov/sec/sec/content/weekly-updates-and-subscription>.

¹¹⁸ Previously, on several occasions these updates did not include any information regarding toxin levels. See, e.g., FDEP, Blue-Green Algal Bloom Weekly Update, Reporting May 17-May 23, 2019, at https://floridadep.gov/sites/default/files/AlgaeBloomWeekly052319_1.pdf (reporting that there were "22 site visits" where microcystin toxins were detected but providing no information about the where these samples were collected or the levels that were reported).

¹¹⁹ 1 microgram per liter (µg/L) is equal to 1 part per billion (1ppb).

¹²⁰ <https://floridadep.gov/sites/default/files/AlgaeBloomWeekly072519.pdf>

¹²¹ https://floridadep.gov/sites/default/files/AlgaeBloomWeekly082919_0.pdf

- 34.75 ppb total microcystins at S5A in the C-51 Canal (September 6-September 12, 2019 update)¹²²
- 28.25 ppb total microcystins at Cypress Lake Boat Ramp at Northwest Shore (December 13-19, 2019 update)¹²³
- **560 ppb total microcystins** at Harbor Isle Lake, Southern Lobe, 150 ppb total microcystins at Lake Jenny Jewel and 34 ppb total microcystins at Lake Anderson (February 14-20, 2020 update)¹²⁴
- **120 ppb** total microcystins at C44, S153 (downstream) (April 17-April 23, 2020 update)¹²⁵
- **800ppb total microcystins** at northern portion of Lake Okeechobee (L004) (June 19-25, 2020 update)¹²⁶
- 99.25 ppb total microcystins at Lake Okeechobee (LZ40 near surface sample) on June 30, 2020 and 290 ppb total microcystins at the same location on June 24, 2020 (June 26-July 1, 2020 update)¹²⁷
- 28 ppb total microcystins at Harbor Isles Lake Southern Lobe and 45 ppb total microcystins at Harbor Isles Lake NW Lobe (August 21-27, 2020 update)¹²⁸
- 62 ppb total microcystins at Lake Okeechobee (KBARSE station) (September 4-10, 2020 update)¹²⁹
- 46 ppb total microcystins at Lake Okeechobee (NCENTER station) (September 18-24, 2020 update)¹³⁰
- 57 ppb total microcystins at the Santa Rosa Sound-Laurel St. and Bay St. drainage; 52 ppb and 53 ppb microcystins at the POLE3S and PELBAY3 monitoring stations at Lake Okeechobee, respectively (September 25, October 1 2020) update¹³¹
- **610 ppb total microcystins** at Harbor Isle Lake-Southern Lobe (January 15-21, 2021 update)¹³²
- **860 ppb total microcystins** at Lake Okeechobee Pahokee Marina (April 23-29, 2021 update)¹³³
- **440 ppb total microcystins** at Lake Okeechobee (PALMOUT3 station) (April 30-May 6, 2021 update)¹³⁴

¹²² https://floridadep.gov/sites/default/files/AlgaeBloomWeekly091219_1.pdf

¹²³ <https://floridadep.gov/sites/default/files/AlgaeBloomWeekly121919.pdf>

¹²⁴ <https://floridadep.gov/sites/default/files/AlgaeBloomWeekly022020.pdf>

¹²⁵ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-042320.pdf>

¹²⁶ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-062520.pdf>

¹²⁷ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-070120_1.pdf

¹²⁸ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-082720.pdf>

¹²⁹ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-091020_0.pdf

¹³⁰ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20092420.pdf

¹³¹ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20100120_0.pdf

¹³² <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom%20WE%20012121.pdf>

¹³³ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom%20WE%20042921.pdf>

¹³⁴ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-050621_1.pdf

- 77 ppb total microcystins at Lake Okeechobee-S352 (Lakeside station)(May 7-13, 2021 update)¹³⁵
- 86ppb total microcystins at C51 Canal-S155A (upstream station)(May 14-20, 2021 update)¹³⁶
- 36 ppb total microcystins at Lake Okeechobee (L004 station)(September 3-9, 2021)¹³⁷
- 44ppb total microcystins at Lake Okeechobee (PALMOUT2 station) (October 1-7, 2021 update)¹³⁸
- **460 ppb of total microcystins** at Lake Okeechobee (Pahokee Marina) (November 26-December 2, 2021 update)¹³⁹
- 50 ppb of microcystins at Lake Sue (February 25-March 3, 2022 update)¹⁴⁰
- 20 ppb of microcystins at Lake Kinsale (with no algal sample collected)(July 29-August 4, 2022 update)¹⁴¹
- **950 ppb of microcystins** at Moody Lake (scum sample)(October 28-November 3, 2022 update)¹⁴²
- **100 ppb of microcystins** at Georges Lake-Boat Ramp Rd. and 49 ppb microcystins at Georges Lake-Center (February 10-16, 2023 update)¹⁴³
- **9000 ppb of microcystins** at Georges Lake-Boat Ramp Rd., (February 17-23, 2023 update)¹⁴⁴
- **150 ppb of microcystins** at Lake Okeechobee (S352 Lakeside) (April 28-May 4, 2023 update)¹⁴⁵
- 52 ppb of microcystins at Lake Okeechobee (S271 lakeside); 32 ppb and 27 ppb microcystins at Lake Okeechobee (S352 Lakeside)(June 9-15, 2023 update)¹⁴⁶
- **233 ppb microcystins** at Lake Okeechobee (S308C lakeside); 50 ppb at Lake Okeechobee (Eastshore); 28 ppb microcystins at Lake Okeechobee (POLESOUT3)(June 16-22 update), 2023¹⁴⁷
- **170 ppb microcystins** at Lake Okeechobee -S308C (lakeside)(July 7-13, 2023 update)¹⁴⁸

¹³⁵ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-051321.pdf>

¹³⁶ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-052021.pdf>. See also Scott Sutton and Matt Sczesny, Health alert sign posted at Lake Worth Beach park because of algae concerns, WPTV (May 14, 2021), at www.wptv.com/news/protecting-paradise/health-alert-sign-posted-at-lake-worth-beach-park-because-of-algae-concerns.

¹³⁷ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-090921.pdf>

¹³⁸ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-100721.pdf>

¹³⁹ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-120221_0.pdf

¹⁴⁰ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-030322.pdf>

¹⁴¹ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-080422.pdf>

¹⁴² <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-110322.pdf>

¹⁴³ <https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloomWeekly-021623.pdf>

¹⁴⁴ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_022323.pdf

¹⁴⁵ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20050423.pdf

¹⁴⁶ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20061523.pdf

¹⁴⁷ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20062223.pdf

¹⁴⁸ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20071323.pdf

- 59 ppb microcystins at Lake Okeechobee-S308C Lakeside (July 14-20, 2023 update)¹⁴⁹
- **160 ppb microcystins** at Caloosahatchee-Jaycee Park; 57 ppb microcystins at C44 Canal-S308C (canal side); 48 ppb microcystins at Caloosahatchee River-Horton Park (July 21-27, 2023 update)¹⁵⁰
- 25 ppb microcystins at Lake Grenada-Boat Ramp (November 17-30, 2023 update)¹⁵¹

Although only a snapshot, these monitoring results illustrate harmful blue-green algae blooms are occurring throughout the year and across the state. Perhaps most concerning, these levels often greatly exceed EPA's recommended criteria (by a multitude of more than 10, 100, and even 1000) and there are no signs that there will be fewer occurrences any time soon. Health alerts are regularly being issued across the state.¹⁵²

B. Cyanotoxins Threaten Florida's Drinking Water Supplies.

Cyanotoxins pose a threat to the state's drinking water. In May 2021, the City of West Palm Beach collected raw water samples from Clear Lake (a source of its drinking water) and finished water samples from its treatment plant showing cylindrospermopsin in the drinking water at levels above the 0.7 µg/L EPA health advisory.¹⁵³ The City issued a water advisory for vulnerable

¹⁴⁹ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20072023.pdf

¹⁵⁰ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20072723.pdf

¹⁵¹ https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20113023.pdf

¹⁵² Cheryl Smith, Lake O discharges: DOH issues health alert for more toxic algae in St. Lucie River, C-44 (April 2, 2024), at www.tcpalm.com/story/news/local/indian-river-lagoon/2024/04/02/doh-health-alert-toxic-algae-st-lucie-river-c-44-canal-lake-okeechobee-discharges-lake-o-releases/73180732007/; Florida Department of Health, Palm Beach County, Health Officials Issue Blue-Green Algae Bloom Alert for Lake Okeechobee Pahokee Marina (April 12, 2024), at <https://palmbeach.floridahealth.gov/newsroom/2024/04/algae-okeechobee.html>; Florida Department of Health, Lake County, Health Officials Issue Blue-Green Algae Bloom Alert for Lake County Lake Yale-Center (LYC) (April 22, 2024), at <https://lake.floridahealth.gov/newsroom/2024/04/HEALTHOFFICIALSISSUEBLUE-GREENALGAEBLOOMALERTFORLAKECOUNTYLAKEYALE-CENTERLYC.html>; Florida Department of Health, Orange County, Health Officials Issue Blue-Green Algae Bloom Caution for Lake Arnold -N. Sore (April 19, 2024), at <https://orange.floridahealth.gov/newsroom/2024/04/blue-green-algae-lake-arnold.html>; Florida Department of Health, Seminole County, Health Official Issues Blue-Green Algae Bloom Alert for Seminole County-Lake Jesup (April 26, 2024), at <https://seminole.floridahealth.gov/newsroom/2024/04/algae-lake-jesup.html>; Florida Department of Health, Lee County, DOH-Lee-Officials-Issue-Blue-Green-Algae-Bloom-Alert-at-Calooahatchee River (April 26, 2024), at <https://lee.floridahealth.gov/newsroom/2024/04/DOH-LEE-OFFICIALS-ISSUE-BLUE-GREEN-ALGAE-BLOOM-ALERT-AT-CALOOSAHATCHEE-RIVER.html>.

¹⁵³ City of West Palm Beach, *Drinking Water Advisory* (May 28, 2021), <https://www.wpb.org/Home/Components/News/News/1699/16>.

populations and established a point of distribution for the dissemination of bottled water to residents affected by the advisory.¹⁵⁴ Clear Lake receives its water in part from Lake Okeechobee.¹⁵⁵ Following the event, the City of West Palm Beach convened an expert panel that issued a report containing a series of recommended actions to reduce the risks to drinking water.¹⁵⁶

In June 2008, a toxic algae bloom occurred east of the Franklin Lock on the Caloosahatchee River and forced the temporary shutdown of the Olga Water Treatment Plant, which obtains its source water from the Caloosahatchee and provides drinking water to more than 30,000 people.¹⁵⁷ The water treatment plant was shut down again on May 5, 2011 because of algae and high salinities.¹⁵⁸ In 2012, a toxic blue-green algae bloom was identified from the City of LaBelle to the S-79 structure and later reappeared at the Olga Water Treatment Plant.¹⁵⁹ In May to June 2013, cyanobacteria blooms eventually led to the temporary closure of the plant.¹⁶⁰ In June 2015, a potentially toxic algal bloom at the Franklin Lock and Dam caused Lee County to shut down the plant and the Florida Department of Health issued a health notice to avoid contact with the Caloosahatchee River due to potentially toxic blooms.¹⁶¹ The plant then went offline on May 30, 2017 for about three weeks due to cyanobacteria concerns.¹⁶² On May 11, 2021 it was reported that algae at the plant was “thickening and stringy”,¹⁶³ that the algae at the plant was

¹⁵⁴ *Id.*; City of West Palm Beach. *Update on Vulnerable Populations Water Advisory* (June 3, 2021), at <https://www.wpb.org/Home/Components/News/News/1722/16>.

¹⁵⁵ See Kimberly Miller, *Look at this lake: Is West Palm’s drinking water supply in danger?*, PALM BEACH POST (Jul. 23, 2019), at <https://www.palmbeachpost.com/news/20190723/look-at-this-lake-is-west-palms-drinking-water-supply-in-danger>.

¹⁵⁶ City of West Palm Beach, Cyanotoxin Expert Panel, at <https://www.wpb.org/government/public-utilities/cyanotoxin-expert-panel>.

¹⁵⁷ Environmental Protection Agency, Water Quality Standards for the State of Florida’s Lakes and Flowing Waters, Final Rule, 75 Federal Register 75762, 75769 (Dec. 6, 2010).

¹⁵⁸ See Crisis in the Caloosahatchee: Algal blooms in local waters, Sanibel Captiva Island Reportr, Islander, and Current (June 8, 2011), at <https://www.captivasanibel.com/2011/06/08/crisis-in-the-caloosahatchee-algal-blooms-in-local-waters/>

¹⁵⁹ South Florida Water Management District, C-43 West Basin Storage Reservoir, Water Quality Feasibility Study, Deliverable 2.2.: Final Information Collection Summary Report, 12 (April 3, 2020).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See https://news.caloosahatchee.org/docs/Cyanobacteria1_170822.pdf

¹⁶³ Memorandum from Periodic Scientists Conference Call Participants, Caloosahatchee & Estuary Conditions Report (May 4-10, 2021).

becoming more prevalent on May 18, 2021,¹⁶⁴ and “algae around the plant are in a thick layer along the banks.”¹⁶⁵ It was reported that the plant was offline during this time.¹⁶⁶

Concerns about the potential threat of cyanotoxins to drinking water supplies are not limited to areas impacted by discharges or that receive water from Lake Okeechobee.¹⁶⁷

Currently, there are no federal water quality numeric criteria or regulations for cyanobacteria or cyanobacterial toxins in drinking water under the Safe Drinking Water Act. In 2015, however, the EPA released health advisory values for algal toxins in drinking water.¹⁶⁸ Four states (Ohio, Oregon, Minnesota, and Vermont) have also published guidance values for microcystin concentrations in drinking water.¹⁶⁹ A 2000 survey conducted by Burns (2008), reported that microcystins were the most commonly found toxin in pre-and post-treated drinking water in Florida.¹⁷⁰ Finished water concentrations ranged from below detection levels to 12.5 µg/L.¹⁷¹

There is also no program in place to monitor for the occurrence of cyanotoxins (including microcystins and cylindrospermopsin) at surface-water treatment plants for drinking water in the United States.¹⁷² Following EPA’s issuance of health advisories for algae toxins in drinking

¹⁶⁴ Memorandum from Periodic Scientists Conference Call Participants, Caloosahatchee & Estuary Conditions Report (May 11-17, 2021).

¹⁶⁵ Memorandum from Periodic Scientists Conference Call Participants, Caloosahatchee & Estuary Conditions Report (May 18-24, 2021).

¹⁶⁶ *See id.*

¹⁶⁷ *See* Ryan Ballogg, Is Manatee County tap water safe to drink with algae bloom? Environmental group concerned, Bradenton Herald (July 13, 2023), at www.bradenton.com/news/local/article277240498.html; Jim Waymer, Climate-fed algae puts Lake Washington, Florida drinking water at risk, Florida Today (April 27, 2023), at www.floridatoday.com/story/news/local/environment/2023/04/27/central-florida-lakes-rivers-face-more-algae-blooms-in-warming-world/70079378007/. *See also* Melaram R. and Lopez-Duenas, B. (2022) Detection and Occurrence of Microcystins and Nodularins in Lake Manatee and Lake Washington-Two Floridian Drinking Water Systems. *Front. Water* 4:899572. doi: 10.3389/frwa.2022.899572. The researchers performed a case study of two Florida lakes supplying drinking water adjacent communities and reported that “although results indicate a low probable health risk from cyanotoxins, more research is needed to understand the intrinsic nature of MCs and NODs by examining their prevalence, distribution, and dynamics in surface drinking water supplies serving nearby communities.”

¹⁶⁸ EPA, EPA Issues Health Advisories to Protect Americans from Algal Toxins in Drinking Water (May 6, 2015), at <https://archive.epa.gov/epa/newsreleases/epa-issues-health-advisories-protect-americans-algal-toxins-drinking-water.html>.

¹⁶⁹ EPA, Guidelines and Recommendations, at https://19january2017snapshot.epa.gov/nutrient-policy-data/guidelines-and-recommendations_.html.

¹⁷⁰ EPA (2015), at 13-14 (citing Burns, J., (2008). Toxic cyanobacteria in Florida waters. In: H.K. Hudnell, (Ed.), *Proceedings of the Interagency, International Symposium on Cyanobacterial Harmful Algal Blooms (ISOC-HAB): State of the Science and Research Needs, Advances in Experimental Medicine and Biology*. Chapter 5. Springer Press, New York, NY. Pp. 139-152).

¹⁷¹ *Id.* at 14.

¹⁷² *Id.* at 13.

water, however, the agency published “Revisions to the Unregulated Contaminant Monitoring Rule” (UCMR 4) for public water systems (PWS) in 2016. Pursuant to the Safe Drinking Water Act (SDWA),¹⁷³ EPA is required once every five years, to issue a new list of no more than thirty (30) unregulated contaminants to be monitored by public water systems (PWSs).¹⁷⁴ UCMR 4 is intended to provide EPA and others with data on the occurrence and levels of contaminants in drinking water.¹⁷⁵ This national survey, which ran from 2018-2020, is one of the primary sources of information on occurrence and levels of exposure that the EPA uses to develop regulatory decisions for contaminants in the public drinking water supply.¹⁷⁶ EPA’s Contaminant Candidate List (CCL), which includes anatoxin-a, cylindrospermopsin, and microcystin, was the primary source of priority contaminants considered for UCMR 4.¹⁷⁷ Of the 30 chemicals monitored under UCMR 4, 9 are cyanotoxins and 1 is a cyanotoxin group.¹⁷⁸ They include: microcystin-LR, microcystin-LA, microcystin-LY, microcystin-RR, nodularin, microcystin-LF, cylindrospermopsin, microcystin-YR, anatoxin-a, and total microcystins.¹⁷⁹

Under the SDWA, EPA is to consider the data from UCMR 4 and other sources, along with peer reviewed literature, to make a regulatory determination on whether to initiate the process to develop national primary drinking water regulations (NPDWR) for these contaminants.¹⁸⁰ The NPDWR are legally enforceable primary standards and treatment techniques that apply to public water systems and protect human health by limiting contaminant levels in drinking water.¹⁸¹ EPA has not developed NPDWR for cyanotoxins as of the date of this petition.

States can establish their own drinking water standards, however, even if they are not regulated under the NPDWR. Such was the case for several states that previously promulgated standards for per-and polyfluoroalkyl substances (PFAS) in the absence of national primary drinking water

¹⁷³ EPA, “Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 4) for Public Water Systems and Announcement of Public Meeting”, 81 Fed. Reg. 92666 (Dec. 20, 2016).

¹⁷⁴ EPA. 2016. The Fourth Unregulated Contaminant Monitoring Rule (UCMR 4), General Information, 1, at <https://www.epa.gov/sites/production/files/2017-03/documents/ucmr4-fact-sheet-general.pdf> (“EPA 2016b”).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 2. Under SDWA, EPA publishes a list of unregulated contaminants every five years that are not subject to any proposed or promulgated national primary drinking water regulations, which are known or anticipated to occur in public water systems, and which may require regulation. The “Contaminant Candidate List” (CCL) contains cyanotoxins, including anatoxin-a, cylindrospermopsin, microcystin, and saxitoxin in the most recent, 2014 CCL 4. *See* EPA. Contaminant Candidate List (CCL) and Regulatory Determination. Chemical Contaminants-CCL 4, at <https://www.epa.gov/ccl/chemical-contaminants-ccl-4>.

¹⁷⁸ EPA (2016b) at 1.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ EPA, Ground Water and Drinking Water, National Primary Drinking Water Regulations, at <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

standards.¹⁸² Despite the repeated occurrence of wide-spread HABs, and concerning incidents like the ones previously discussed, the State of Florida has failed to issue any drinking water standards for cyanotoxins.

VI. CYANOBACTERIA BLOOMS HARM HUMAN HEALTH.

A. The Public is Exposed to Harmful Cyanotoxins While Recreating.

Scientists have expressed increasing concern about the long-term health effects of families being exposed to cyanotoxins in Florida's waters.¹⁸³ Cyanobacteria blooms can produce toxins containing hepatotoxic, neurotoxic, and cytotoxic compounds.¹⁸⁴ Hepatotoxins include microcystins and cylindrospermopsin while neurotoxins include anatoxins and paralytic shellfish poisons.¹⁸⁵

Exposure from recreational water sources can occur through incidental ingestion while recreating, contact with the skin during activities like swimming, wading, and surfing, and inhalation as waterborne cyanotoxins are aerosolized.¹⁸⁶ Researchers at Florida Gulf Coast University found toxins can be inhaled and reach deep into the lungs¹⁸⁷ and documented airborne particles of cyanobacteria have been documented more than a mile inland from any retention ponds and three miles from the Caloosahatchee River.¹⁸⁸ Non-recreational exposure can occur

¹⁸² See, e.g.,

Contaminant Levels (MCLs), MICHIGAN PFAS ACTION RESPONSE TEAM, https://www.michigan.gov/pfasresponse/0,9038,7-365-95571_99970---,00.html.

Michigan cited the lack of enforceable federal standards for PFAS chemicals during the development of its state drinking water standards. See *Drinking Water Rule Promulgation*, MICH. DEP'T OF ENV'T, GREAT LAKES, & ENERGY, https://www.michigan.gov/egle/0,9429,7-135-3313_3675_3691-9647--,00.html.

¹⁸³ See, e.g., Metcalf, J., S.A. Banack, J.T. Powell, F.J.M. Tymm, S.J. Murch, L.E. Brand, L.E., and P.A. Cox. 2018. Public health responses to toxic cyanobacterial blooms: perspectives from the 2016 Florida event, *Water Policy* 20 (5): 919-932.

¹⁸⁴ EPA (2016) at 15.

¹⁸⁵ *Id.* at 1; Williams, C.D., J. Burns, A. Chapman, M. Pawlowicz, and W. Carmichael. 2006. Assessment of Cyanotoxins in Florida's Surface Waters and Associated Drinking Water Resources, Final Report, 4, April 11, 2006.

¹⁸⁶ EPA (2016) at 29-30, 35.

¹⁸⁷ Williams, A.B. 2018. Algae toxins are airborne and can reach deep into human lungs, FGCU research shows, Fort Myers News Press, Nov. 29, 2018 at <https://www.news-press.com/story/tech/science/environment/2018/11/27/blue-green-algae-toxins-can-penetrates-lungs-fgcu-research-shows/2120238002/>.

¹⁸⁸ Williams, A.B. 2019. Algae crisis: Airborne particles of toxic cyanobacteria can travel more than a mile inland, new FGCU study shows, Fort Myers News Press, Mar. 15, 2019 at <https://www.news-press.com/story/tech/science/environment/2019/03/15/new-health-questions-raised-fgcu-research-toxic-algae-dust/3176195002/>.

through the consumption of cyanotoxin-contaminated drinking water and food (including fish) and during bathing or showering.¹⁸⁹ Studies have demonstrated bioaccumulation of cyanotoxins in mussels, crustaceans, corals, and fish.¹⁹⁰ Cyanotoxins may transfer through the food chain, and there is a possibility that these toxins can reach humans through the consumption of fish.¹⁹¹ Microcystin accumulation may also possibly occur in humans.¹⁹²

Exposures can result in gastrointestinal, dermatologic, respiratory, neurologic and other symptoms.¹⁹³ Some exposures have resulted in severe respiratory impairment (such as pneumonia and adult respiratory distress syndrome), as well as liver and kidney damage from ingesting contaminated drinking water.¹⁹⁴

Young children, pregnant women, nursing mothers, the elderly, and immunocompromised individuals may be more susceptible to the ill effects of cyanotoxins than the general population.¹⁹⁵ Accordingly, EPA has issued drinking water health advisories for microcystins and cylindrospermopsin that are at lower levels for bottle-fed infants and preschool-aged children than school-aged children and young adults.¹⁹⁶ The EPA also suggests that as a precautionary measure, other more vulnerable populations may want to consider following the recommendations for preschool age children and younger.¹⁹⁷

¹⁸⁹ EPA (2016) at 1.

¹⁹⁰ See Miller, M.A., Kudela, R.M., Mekebri, A., Crane, D., Oates, S.C., Tinker, M., Staedler, M., Miller, W.A., Toy-Choutka, S.T., Dominik, C., Hardin, D., Langlois, G., Murray, M., Ward, K., Jessup, D.A. 2010. Evidence for a novel marine harmful algal bloom: cyanotoxin (microcystin) transfer from land to sea otters. *PLoS ONE* 5(9):e 12576. doi:10.1371/journal.pone.0012576 (citing Malbrouck, C., Kestemont, P. 2006. Effects of microcystins on fish. *Environmental Toxicology and Chemistry* 25: 72-85; Williams, D.E., Dawe, S.C., Kent, M.L., Andersen, R.J., Craig, M., et al. 1997. Bioaccumulation and clearance of microcystins from salt water mussels, *Mytilus edulis*, and in vivo evidence for covalently bound microcystins in mussel tissues. *Toxicon* 35: 1617-1625; Vasconcelos, V., Oliveira, S., Teles, F.O. 2001. Impact of a toxic and a non-toxic strain of *Microcystis aeruginosa* on the crayfish *Procambarus clarkii*. *Toxicon* 39: 1461-1470; Zimba, P.V., Camus, A., Allen EH, Burkholder, J.M. 2006. Co-occurrence of white shrimp, *Litopenaeus vannamei*, mortalities and microcystin toxin in a southeastern USA shrimp facility. *Aquaculture* 261: 1048-1055; Amorim, A, Vasconcelos, V. 1999. Dynamics of microcystins in the mussel *Mytilus galloprovincialis*. *Toxicon* 37: 1041-1052; Richardson LL, Sekar, R., Myers, J.L., Gantar M., Voss, J.D., et al. 2007. The presence of the cyanobacterial toxin microcystin in black band disease of corals. *FEMS Microbiology Letters* 272: 182-187).

¹⁹¹ Zanchett, G. and E.C. Oliveira-Filho. 2013. Cyanobacteria and cyanotoxins: from impacts on aquatic ecosystems and human health to anticarcinogenic effects, *Toxins* 5(10): 1896-1917.

¹⁹² Miller, (2010) et al.

¹⁹³ EPA (2016) at 4.

¹⁹⁴ Hillborn, E.D. and V.R. Beasley. 2015. One health and cyanobacteria in freshwater systems: animal illnesses and deaths are sentinel events for human health risks, *Toxins*, 1374-1395.

¹⁹⁵ EPA. 2015. Drinking Water Health Advisory for the Cyanobacterial Microcystin Toxins, EPA Doc. Number 820R15100, June 15, 2015.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

B. Several Studies Have Documented the Human Health Effects of Cyanobacteria Blooms.

The Centers for Disease Control and Prevention (CDC) investigated 11 waterborne disease outbreaks associated with HABs occurring in freshwater lakes across the United States between 2009 and 2010.¹⁹⁸ These HABs affected at least 61 individuals resulting in 2 hospitalizations.¹⁹⁹ Researchers concluded that the time to onset of effects might be rapid, that children might be at higher risk for illness, and that HAB-associated outbreaks occur during the warmer months.²⁰⁰

The New York State Department of Health surveyed 16 counties and determined that 32 people became ill in 2015 after recreating in lakes affected by HABs.²⁰¹

HAB-associated illness from recreational exposure may be underreported due to multiple possible exposure routes and the non-specific nature of potential health effects.²⁰²

According to the EPA, data indicates that the primary target organ for microcystins is the liver.²⁰³ Studies in laboratory animals document liver, kidney, and reproductive effects following short-term and sub-chronic oral exposures to microcystin-LR.²⁰⁴

Cyanotoxins have also been linked to poisoning, cancer, and disease. The International Agency for Research on Cancer classified microcystin-LR as possibly carcinogenic to humans.²⁰⁵ This was based on substantial evidence supporting a plausible tumor promoter mechanism for these

¹⁹⁸ EPA (2016) at 4 (citing Hilborn, E.D., V.A. Roberts, L.C. Backer, E. DeConno, J.S. Egan, J.B. Hyde, D.C. Nichohlas, E.J. Weigert, L.M. Billing, M. DiOrion, M.C. Mohr, F.J. Hardy, T.J. Wade, J.S. Yoder, and M.C. Hlavsa. 2014. Algal bloom-associated disease outbreaks among users of freshwater lakes-United States, 2009-2010. Morbidity and Mortality Weekly Report (MMWR), 63, 11-15).

¹⁹⁹ *Id.*

²⁰⁰ *Id.* In 2019, the CDC also announced that it will study Lake Okeechobee fishing guides to understand the long-term effects of exposure to cyanotoxins. See Williams, A.B. 2019. CDC to study how inhaled algae toxins affect Lake Okeechobee fishing guides, Fort Myers News-Press (May 20, 2019), at <https://www.floridatoday.com/story/news/2019/05/20/florida-toxic-algae-cdc-study-lake-o-fishing-guides-who-inhaled-toxic-algae/3742341002/>.

²⁰¹ Mary Figgatt et al., Harmful Algal Bloom-Associated Illnesses in Humans and Dogs Identified Through a Pilot Surveillance System-New York, 2015. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, Nov. 3, 2017.

²⁰² EPA (2016) at 4.

²⁰³ *Id.* at 35.

²⁰⁴ *Id.* at 45.

²⁰⁵ EPA Drinking Water Health Advisory for Cyanobacterial Microcystin Toxins, at 34.

liver toxins.²⁰⁶ According to one leading expert, “[c]yanotoxins are among the most potent toxins known, far more potent than industrial chemicals.”²⁰⁷

The harmful effects of cyanobacteria blooms may be having a significant and unique impact to Florida’s residents and visitors. In a 12-year study, researchers at Ohio State University identified significant clusters of deaths attributable to non-alcoholic liver disease in coastal areas impacted by cyanobacterial blooms.²⁰⁸ The cluster of deaths studied in Florida occurred in St. Lucie, Indian River, and Okeechobee counties, where based on data calculated by the CDC, there was a death rate from non-alcoholic liver disease that was nearly twice as high as the national rate.²⁰⁹ The study, however, did not find a causal relationship between cyanobacterial blooms and liver disease, and it did not include blooms that coincide with the discharges in 2013 and 2016.²¹⁰

C. The Cyanobacteria-Derived toxin, BMAA, Has Been Linked to Neurodegenerative Disease.

The non-protein amino acid neurotoxin β -N-methylamino-L-alanine (BMAA) is a cyanobacteria-derived toxin that has been linked to neurodegenerative diseases like Lou Gehrig’s disease (amyotrophic lateral sclerosis, or “ALS”), Alzheimer’s disease, and Parkinsonism Dementia Complex (ALS/PDC).²¹¹ ALS is a debilitating and fatal neuromuscular disease affecting 2 of every 100,000 people worldwide.²¹² Approximately 30,000 and 500,000 people suffer from ALS and Parkinson’s Disease in the United States, respectively.²¹³ Alzheimer’s disease inflicts another 5.4 million Americans.²¹⁴ Cases of these neurodegenerative diseases are on the rise.²¹⁵ Increased

²⁰⁶ *Id.*

²⁰⁷ Harmful Algae Blooms: The Challenges on the Nation’s Coastlines, Hearing Before the Subcommittee on Energy and Environment, Committee on Science and Technology House of Representatives, 103rd Cong. 110-113 (2008)(statement by Dr. Hilton Kenneth Hudnell, Vice President and Director of Science, SolarBee, Inc.).

²⁰⁸ Zhang, et al. (2015); Treadway, T. 2017. Ohio State University study links toxic algae blooms, fatal liver disease, Naples Daily News, May 22, 2017, at <https://www.naplesnews.com/story/news/local/indian-river-lagoon/health/2017/05/22/ohio-state-university-study-links-toxic-algae-blooms-fatal-liver-disease/100971180/>.

²⁰⁹ Treadway (2017).

²¹⁰ *Id.*

²¹¹ Banack, S.A. et al. 2010. The Cyanobacteria Derived Toxin Beta-N-Methylamino-L-Alanine and Amyotrophic Lateral Sclerosis, *Toxins* 2010, 2, 2837-2850; Bienfang, P.K. et al. 2011. Prominent Human Health Impacts from Several Marine Microbes: History, Ecology, and Public Health Implications. *International Journal of Microbiology*. Vol. 2011. Article ID 152815.

²¹² *Id.*

²¹³ Holtcamp, W. 2012. The Emerging Science of BMAA. *Environmental Health Perspectives*. Vol. 120, No. 3.

²¹⁴ *Id.*

²¹⁵ Brand, L. et al. 2010. Cyanobacteria Blooms and the Occurrence of the neurotoxin beta-N-methylamino-L-alanine (BMAA) in South Florida Aquatic Food Webs. *Harmful Algae*. 2010 Sept. 1; 9(6): 620-635.

longevity alone may not account for all of this increase, and heritability of these diseases is low (less than 10% of all cases).²¹⁶

BMAA has been documented in recreational waters throughout the world,²¹⁷ and is bioaccumulating in different organisms up the food chain, presenting an increased human health risk.²¹⁸ Brand et al. (2010) found BMAA bio-concentrated in crustaceans, mollusks, and some fish in South Florida.²¹⁹ High levels of BMAA have been found in fish in the Caloosahatchee River and Florida Bay.²²⁰ Cox et al. (2005) recommended that BMAA concentrations be monitored in invertebrates, fish, and grazing animals used for human consumption that directly consume cyanobacteria or forage on plants or prey that may have accumulated cyanobacteria-produced BMAA.²²¹ Subsequent published articles by other researchers, including in the *Journal of the American Medical Association*, further support these recommendations.²²²

VII. EPA SHOULD EXERCISE ITS AUTHORITY TO PROMULGATE HUMAN HEALTH CRITERIA FOR CYANOTOXINS IN FLORIDA.

State water quality standards “shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.”²²³ These water quality standards “shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter.”²²⁴ The Clean Water Act’s implementing regulations explain that to “serve the purposes of the Act,”

Water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value [for] public water supplies,

²¹⁶ *Id.*

²¹⁷ Banack, et al. (2010).

²¹⁸ Brand, L. 2009. Human exposure to cyanobacteria and BMAA. *Amyotrophic Lateral Sclerosis*, 2009, (Supplement 2): 85-95.

²¹⁹ Banack, et al. (2010); Brand (2009); Brand, et al. (2010).

²²⁰ Brand, et al. (2010).

²²¹ Bienfang, et al. (2011); Cox, P.A., S.A. Banack, S.J. Murch et al. 2005. Diverse taxa of cyanobacteria produce B-N-methylamino-L-alanine, a neurotoxic amino acid, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 102, no. 14, pp. 5074-5078, 2005.

²²² Bienfang, et al. (2011) (citing Kuehn, B.M. 2005. Environmental neurotoxin may pose health threat, *Journal of the American Medical Association*, vol. 293, no. 20, pp. 2460-2462, 2005; Ince, P.G. and G.A. Codd. 2005. Return of the cycad hypothesis-does the amyotrophic lateral sclerosis/parkinsonism dementia complex (ALS/PDC) of Guam have new implications for global health? *Neuropathology and Applied Neurobiology*, vol. 31, no. 4, pp. 345-353, 2005; Esterhuizen, M. and T.G. Downing. 2008. B-N-methylamino-l-alanine (BMAA) in novel South African cyanobacterial isolates, *Ecotoxicology and Environmental Safety*, vol. 71, no. 2, pp. 309-313, 2008).

²²³ 33 U.S.C. § 1313(c)(2)(A).

²²⁴ *Id.*

propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.”²²⁵

Pursuant to Section 303(c)(4)(B) of the Act, in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act, the Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved.²²⁶

EPA should exercise its authority under Section 303(c)(4)(B) to promulgate water quality criteria for cyanotoxins in Florida because a federal standard is necessary to meet the requirements of the Act. Existing nutrient standards are not aimed at protecting human health and recreation; the State’s sampling, testing, and monitoring requirements are inadequate; the proposed use of chlorophyll-a as a proxy is not based on sound scientific rationale; and the State has failed to submit the results of its triennial review to the EPA as required under the Clean Water Act.

Promulgating such standards is good public policy, as Florida’s residents and visitors desire such protections and EPA must provide a backstop when the state fails to uphold its end of the bargain under the principles of “cooperative federalism” that underpin the Clean Water Act. EPA should act swiftly amidst state inaction and promulgate cyanotoxin standards for all of Florida’s Class I, II, and III waters.

A. A Federal Standard is Necessary to Meet the Requirements of the CWA.

1. Florida’s Numeric Nutrient Criteria Are Not Intended to Protect Human Health.

The state’s position to forgo adopting cyanotoxin standards because, among other reasons, it has “already adopted numeric nutrient criteria designed to be protective of aquatic life use support, which was determined to be the most sensitive use”²²⁷ is based on a misunderstanding of the different categories of water quality criteria and the unique roles they play under Clean Water Act.

There are two primary categories of water quality criteria: human health criteria (HHC) and aquatic life criteria.²²⁸ “Human health water quality criteria protect any designated uses related to ingestion of water, ingestion of aquatic organisms, or other waterborne exposure from surface

²²⁵ 40 C.F.R. § 131.2.

²²⁶ 33 U.S.C. § 1313(c)(4)(B).

²²⁷ DIV. OF ENV’T ASSESSMENT & RESTORATION, FLA. DEP’T OF ENV’T PROT., TRIENNIAL

REVIEW OF FLORIDA’S WATER QUALITY STANDARDS 84 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/May%202021%20Workshop%20Technical%20Documents/MayPublicWorkshop3_19_21_All_Slides-FINAL%20PDF.pdf

²²⁸ Environmental Protection Agency, Water Quality Standards to Protect Human Health in Florida, Proposed Rule, 88 Fed. Reg. 85530, 85531 (Dec. 8, 2023).

waters.”²²⁹ This *may* include, but is not limited to, consumption of fish or shellfish and the protection of sources of drinking water.²³⁰ The derivation of human health criteria requires information about the toxicological endpoints of concern for water pollutants and the pathways of human exposure to those pollutants.²³¹ The two primary pathways that the EPA considers when it establishes human health 304(a) criteria recommendations, including those for cyanotoxins, are direct and indirect ingestion of water and consumption of fish or shellfish obtained from the waterbody.²³² The 304(a) recommended criteria are designed to minimize the risk of adverse effects on human health from chronic or lifetime exposure to pollutants through these two primary pathways of exposure.²³³ EPA uses a number of different parameters in its human health criteria derivation equations including body weight, drinking water intake, fish consumption rate, bioaccumulation, and relative source contribution, and cancer risk levels.²³⁴ Human health criteria can also include a subset of recreational water quality criteria that are designed to protect primary contact recreational uses like “swimming, bathing, surfing, water skiing, tubing, water play by children, and similar water contact activities where a high degree of bodily contact with the water, immersion and ingestion are likely.”²³⁵ This includes the recommended human health recreational ambient water quality criteria for microcystins and cylindrospermopsin that the EPA issued in 2019, which address recommended concentrations of cyanotoxins in recreational waters to protect primary contact recreational uses.²³⁶

In comparison, aquatic life water quality criteria protect designated uses such as survival, growth, and reproduction of fish, invertebrates, and other aquatic organisms.²³⁷ These criteria “are necessary to support any designated uses related to protection and propagation of fish, shellfish, and wildlife.”²³⁸ Aquatic life criteria are derived by assessing the highest concentration of a substance in water that will not present a significant risk to the aquatic organisms in the water.²³⁹ EPA has published aquatic life 304(a) criteria recommendations that represent specific levels of chemicals or conditions in a waterbody that are not expected to cause adverse effects to aquatic life.²⁴⁰ States may also adopt site-specific aquatic life criteria.²⁴¹

²²⁹ EPA, Water Quality Standards Handbook, Chapter 3: Water Quality Criteria, 9 (Dec. 2023).

²³⁰ *Id.* (emphasis added).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* at 11-16.

²³⁵ *Id.* at 17.

²³⁶ *Id.*

²³⁷ 88 Fed. Reg. 85530, 85531.

²³⁸ EPA, Water Quality Standards Handbook, Chapter 3: Water Quality Criteria, 19 (Dec. 2023).

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.* 21-24.

Florida's numeric nutrient criteria are based on protecting aquatic life rather than human health.²⁴² Moreover, while nutrient pollution can adversely impact aquatic life, impair recreational designated uses, and threaten human health, by fueling algal blooms,²⁴³ these nutrient criteria are not primarily focused on protecting human health from cyanobacteria blooms but rather on reducing impacts to flora and fauna. Florida Department of Environmental Protection (FDEP) contends but provides no additional support for the notion that these numeric nutrient criteria "also protect human health."²⁴⁴ For example, there is no indication that in adopting its numeric nutrient criteria, that the state ever used cyanotoxins as a risk metric with a human health assessment endpoint for recreational uses and drinking water sources.²⁴⁵ Even if the state did consider the risk to human health from cyanotoxins in its development of the numeric nutrient criteria, nutrient criteria should not be viewed as a substitute for but as complementary to cyanotoxin criteria.²⁴⁶ As such, the state's reliance on numeric nutrient criteria to justify its decision not to establish criteria for cyanotoxins does not include sufficient parameters and constituents to protect recreational waters and other designated uses from cyanotoxins.

A more comprehensive approach is necessary to combat harmful algal blooms. By establishing criteria for cyanotoxins and incorporating cyanotoxins as biological endpoints for setting nutrient discharge limits in TMDLs,²⁴⁷ the state would be able to fully address the primary contributors to harmful algal blooms, which in addition to nutrient pollution, include water management

²⁴² DIV. OF ENV'T ASSESSMENT & RESTORATION, FLA. DEP'T OF ENV'T PROT., TRIENNIAL REVIEW OF FLORIDA'S WATER QUALITY STANDARDS 81–94 (2021).

²⁴³ Water Quality Standards Handbook at 25.

²⁴⁴ DIV. OF ENV'T ASSESSMENT & RESTORATION, FLA. DEP'T OF ENV'T PROT., TRIENNIAL REVIEW OF FLORIDA'S WATER QUALITY STANDARDS 84 (2021).

²⁴⁵ See EPA, Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs (Aug. 2021)(using metrics based on EPA's 2019 Final Recommendations for Human Health Recreational Water Quality Criteria and Swimming Advisories for Cyanotoxins).

²⁴⁶ See EPA, Frequently Asked Questions: Implementing the 2021 Recommended Clean Water Act Section 304(a) Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs, 23 (Oct. 2023), at [Final Frequently Asked Questions: Implementing the 2021 Recommended Clean Water Act Section 304\(a\) Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs \(epa.gov\)](#) (explaining the relationship between EPA's 2021 recommended criteria for nutrients in lakes and reservoirs to its 2019 recommended human health recreational ambient water quality criteria for cyanotoxins).

²⁴⁷ See Williams, C.D., J. Burns, A. Chapman, M. Pawlowicz, and W. Carmichael. 2006. Assessment of Cyanotoxins in Florida's Surface Waters and Associated Drinking Water Resources, Final Report, 34, April 11, 2006 (recommending that "surface water management plans, Pollution Load Reduction Goals (PLRGs), and Total Maximum Load (TMDLs) goals for nutrient-impaired water incorporate cyanobacteria and specifically cyanotoxins as biological endpoints for setting nutrient discharge limits. This strategy would help protect aquatic ecosystems and water catchments that are used for drinking water supply.").

decisions (e.g. water flow and water levels), and the effects of climate change. Water quality criteria for cyanotoxins would necessitate greater regulatory focus, transparency, and accountability because these criteria would serve as a clearly defined level of human health and environmental protection that pollution control measures must meet. Further, by identifying cyanotoxins independently of nutrients, the Department would be able to better address the connection between nutrients and HABs and account for other contributors to HABs, including the timing, volume, and distribution of water flows and levels by water managers, and rising temperatures and changes in precipitation fueled by climate change. In sum, exacting water quality criteria specifically for cyanotoxins sets a clear path forward for monitoring, assessing, and reducing HABs.

2. The State's Cyanotoxin Monitoring and Recreational Advisory Protocols Do Not Fully Inform and Protect the Public.

A central requirement of the Clean Water Act is that water quality standards protect the public health or welfare. In addition to relying on numeric nutrient standards that are not intended to protect public health and recreation, the state's reliance on a flawed qualitative approach to monitor for and warn the public of recreating in waters with high cyanotoxin levels also fails to meet the requirements of the Clean Water Act.

The Florida Department of Health (FDOH) purports to have established a “collaborative protocol” with the FDEP and the Fish and Wildlife Conservation Commission (FWC) for the monitoring and public notification of algae blooms in state waters.²⁴⁸ FDOH has explained that FDEP conducts sampling and testing of freshwater for blue-green algae while FWC samples and tests marine waters for red tide.²⁴⁹ FDOH then gathers that data to develop a two-tiered notification process consisting of health cautions and health alerts.²⁵⁰ Health Cautions are based on the presence of a bloom and Health Alerts are issued when a toxin is detected.²⁵¹ FDOH then distributes that information to affected county health departments.²⁵² From there, FDOH asserts the county health departments relay that information locally through certain “established notification channels”.²⁵³ FDOH explains that “with concurrence from DEP and input from Florida’s Blue Green Algae Task Force, these conservative thresholds were selected over numeric criteria because they offer the greatest protection as conditions change.”²⁵⁴ FDOH submits that basing these notifications on the presence of cyanobacteria or their toxins, gives the public information in case conditions worsen.²⁵⁵

²⁴⁸ FDOH, Our Program and Partners, Bloom Monitoring and Notification, at <https://www.floridahealth.gov/environmental-health/aquatic-toxins/program-and-partners/index.html>.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

The state's approach misses the mark when it comes to providing full protections to its residents and visitors. Although at first blush, it may appear that the state is taking the most conservative approach because any detectable concentration of cyanotoxins triggers a health alert,²⁵⁶ such action depends entirely on agency monitoring for cyanotoxins *when a visible bloom is present* or when members of the public notify FDEP that they believe a bloom is present.

In its November 4-7, 2019 Public Workshop Presentation on the Triennial Review of Florida's Water Quality Standards, FDEP explained, the visual presence of an algal bloom is "used as a trigger by the DEP to perform Algal Bloom Response Sampling (cyanotoxins, algal ID, Nutrients, and CHI a)."²⁵⁷ While FDEP contends that it "frequently monitors" Florida's water quality with the state's water management districts, it only "routinely" collects algae bloom samples "as soon as they are observed as part of this effort."²⁵⁸ This approach is fundamentally flawed because it fails to provide for actual, routine monitoring and does not account for the presence of cyanotoxins when there is no visible bloom. As a result, there could be significant delays between the time cyanotoxins first occur at concentrations greater than EPA recommended guidelines and the time these levels are reported to the public, given that some of the tests that are performed to measure the levels of toxicity may take days or even weeks to run.²⁵⁹ Indeed, several Florida Department of Health press releases are dated almost a week after samples were taken and/or a bloom was reported.²⁶⁰ Further, the FDEP's Weekly Blue Green

²⁵⁶ FDEP, Progress to Date and Next Steps, Miami, Florida (Feb. 1, 2023), *available at* https://protectingfloridatogether.gov/sites/default/files/documents/Progress%20To%20Date%20And%20Next%20Steps_501.pdf.

²⁵⁷ FDEP, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration, Nov. 4-7, 2019, p. 78, at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/November%202019%20Workshops%20Technical%20Documentation/NovPublicWorkshop10_29_19_Final%20Presentation.pdf.

²⁵⁸ FDEP, Algal Bloom Contacts, at <https://floridadep.gov/dear/algal-bloom/content/algal-bloom-contacts#Health>. FDEP adds that "staff can be deployed to take additional samples in response to reported blooms-whether from a citizen, or other response team agencies or other sources."

²⁵⁹ Blue-green algae blooms are also not selecting of cyanotoxins, making it difficult if not impossible to differentiate a toxic blooming algae from a benign bloom. *See* Wisconsin Department of Health Services, Blue-Green Algae: Health Concerns Related to Blue-Green Algae, Are all blue-green algae dangerous?, at <https://www.dhs.wisconsin.gov/algae/healthconcerns.htm#:~:text=Not%20all%20algal%20blooms%20produce,bloom%20is%20dangerous%20or%20not>. Therefore, quick testing is important even if a visible surface bloom has been observed and testing is initiated.

²⁶⁰ *See, e.g.*, Florida Department of Health, Lake County, Health Officials Issue Blue-Green Algae Bloom Alert for Lake County Lake Yale-Center (LYC) (April 22, 2024), at <https://lake.floridahealth.gov/newsroom/2024/04/HEALTHOFFICIALSISSUEBLUE-GREENALGAEBLOOMALERTFORLAKECOUNTYLAKEYALE-CENTERLYC.html>.

Algae Report often has samples pending with no follow up as to whether they came back with cyanotoxins until the following week.²⁶¹

The potential human health effects of failing to routinely monitor for cyanotoxins when blooms are absent are far from inconsequential. As EPA explained in 2016 when it issued its draft recommended criteria for cyanotoxins, microcystins can persist even after a bloom is no longer visible and cyanotoxin concentrations can be higher after the initial bloom fades.²⁶² Zastepa (2014) found that dissolved microcystin-LA was present in waters at a concentration of 20 µg/L or more for 9 ½ weeks even though the bloom was not visible after 5 weeks.²⁶³ Further, cylindrospermopsin-producing cyanobacteria do not tend to form visible surface scums, and the highest concentrations occur below the water surface.²⁶⁴ Accordingly, there is little support for FDEP's position that there is a "very low incidence of toxins in waters without a visible bloom present."²⁶⁵

Because FDEP does not sample for cylindrospermopsin unless the agency or concerned citizens observe an active bloom, the state's water quality monitoring program is likely underreporting the occurrences of cylindrospermopsin levels in state waters exceeding EPA's recommended criteria. As a result of the state's reliance on qualitative criteria to sample and test for cyanotoxins, people could be exposed to harmful levels of cyanotoxins while recreating in waters that are not the subject of a health advisory. While FDEP contends that the visual presence of a bloom is used as a threshold because it "allows the public to make decisions about recreating in a water at the time of use,"²⁶⁶ the public cannot make fully informed decisions without being notified that high levels of cyanotoxins may still be present despite the absence of a visible surface bloom.

Moreover, even if cyanotoxins are detected following this qualitative "trigger," DOH merely "*encourages* local county health units to issue an alert advisory."²⁶⁷ The FDOH website does not explain what "established notification channels" county health departments utilize. There do not

²⁶¹ Cf. FDEP, Blue-Green Algal Bloom Weekly Update, Reporting June 23-June 29, 2023 (reporting Lake Okeechobee-S352(lakeside): 33 ppb *Microcystis aeruginosa*), at https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20062923.pdf; FDEP, Blue-Green Algal Bloom Weekly Update, Reporting June 16-June 22, 2023 (reporting that results are pending for samples collected at Lake Okeechobee-S352(lakeside), at https://floridadep.gov/sites/default/files/Blue-Green%20AlgalBloom_WE%20062223.pdf.

²⁶² EPA (2016) at 1, 5, 31.

²⁶³ Zastepa A. (2014). Fate and persistence of microcystin congeners in lakes and lake sediments. University of Ottawa, Ottawa, Canada.

²⁶⁴ EPA (2016) at 1, 5.

²⁶⁵ FDEP, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration, Nov. 4-7, 2019, p. 79, at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/November%202019%20Workshops%20Technical%20Documentation/NovPublicWorkshop_10_29_19_Final%20Presentation.pdf.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 78.

appear to be any written assurances, in state regulations or policies, that these advisories will be issued in every instance in a timely and consistent manner at the local level. It is our understanding that FDOH notifies the local county health department in the affected area and recommends options for the county health department to communicate to the local community that a Health Caution or Health Alert has been issued by FDOH. These options may include press release templates and signage. The county health department, however, appears to be under no obligation to communicate this information to the public, much less through any particular channel. Some counties may not even issue a press release for a Health Caution or a Health Alert. Indeed, it has been petitioners' collective experience, that often county health departments take no action at all.

It also appears that in addition to FDOH, the County Health Departments and FDEP, the United States Army Corps of Engineers and South Florida Water Management District have indicated that they also communicate health risk, monitoring, and reporting to the public through various different means and capacities.²⁶⁸ Yet, in the case of the Corps and Water Management District, their respective websites do not appear to provide the public with the opportunity to receive email notifications of these reports and the distribution list is largely by word of mouth. Moreover, there is no health risk information that accompanies these reports, only statements about blooms occurring at structures with a narrative index describing the size of visible blooms (ranging from a "car" to "larger than a football field" and the severity from "low" to "high.")²⁶⁹ This is an inefficient and unnecessarily complicated process that could be simplified with easily identifiable numeric state water quality standards for cyanotoxins.

Since FDOH began posting press releases on its website regarding harmful algal blooms, it issued 73 blue-green algae alerts in 2022, 139 blue-green algae alerts in 2023, and more than 40 cautions and alerts already this year (2024).²⁷⁰ Unfortunately, such alerts lack full transparency, as the public is not notified in these press releases which cyanotoxins have been detected in these waters, much less the levels that are present. To find out what cyanotoxins were identified and at what levels, the public has to go FDEP's website or subscribe to email updates and comb through weekly monitoring reports to obtain that information, as Petitioners have done here.²⁷¹ FDOH's failure to widely disseminate this information contemporaneously with the issuance of a health alert, coupled with the lack of cyanotoxin standards for which these levels could be compared to, deprives the public of important information regarding the toxicity of these blooms.

This is a critical deficiency in the state's program that cannot be overlooked. As the monitoring reports discussed above reveal, in many instances cyanotoxin levels exceed the EPA's recommended criteria ten, fifty, hundred, or even **a thousand-fold**. Cyanotoxin levels this high pose not only a risk to those who may ingest water while recreating, but also to those who have contact with the water through their skin or breath in the aerosolized toxins while visiting the

²⁶⁸ See <https://www.saj.usace.army.mil/Algae/>

²⁶⁹ See USACE BGA Report (Sunday, April 7, 2024).

²⁷⁰ FDOH, *Where are HABs?*, at <https://www.floridahealth.gov/environmental-health/aquatic-toxins/where-are-habs.html>.

²⁷¹ See FDEP, *Weekly Updates and Subscriptions*, at <https://floridadep.gov/sec/sec/content/weekly-updates-and-subscription>.

affected area. **For example, some of the highest levels recorded were taken near a marina, a boat ramp, and a public park.**

Therefore, the assumption that by merely alerting the public to stay out of the water is adequate to protect public health, does not consider these other risks and pathways to exposure, much less give the public sufficient information to fully appreciate the severity of the problem and make fully informed decisions prior to recreating. Without this information, the public may also be unable to fully appreciate the severity of Florida's toxic algae crisis and communicate these concerns to state and local decisionmakers. There must be greater transparency and accountability and the public must be better informed as soon as cyanotoxins are detected in the state's waters.

Instead, the state should adopt quantitative standards, because they establish levels that can be routinely monitored for and serve as clear trigger points for public health officials to act, regardless of whether a bloom is present.²⁷² Further, from a public health research perspective, quantitative standards would also provide publicly available data for studies to draw more definitive conclusions due to routine monitoring.²⁷³ Contrary to FDEP's assertion that a qualitative trigger is adequate and consistent with the precautionary principle,²⁷⁴ an approach that is not dependent on the observation of a bloom before assessing the risk to human health is far more consistent with the precautionary principle, which counsels in favor of taking action even if some cause and effect relationships are not fully established scientifically.²⁷⁵ While FDEP may

²⁷² As previously discussed, such is the case in numerous states that have numeric values in their recreational water guidelines, which require their respective state environmental and public health agencies to engage in frequent monitoring and issue alerts, advisories, and closures when these levels are exceeded.

²⁷³ See Guzman, E.A., Peterson, T.A., Winder, P.L., Francis, K.T., McFarland, M., Roberts, J.C., Sandle, J. and Wright, A.E. An assessment of potential threats to human health from algae blooms in the Indian River Lagoon (USA) 2018-2021: unique patterns of cytotoxicity associated with toxins. *Toxins* 2023 15(11), 664; <https://doi.org/10.3390/toxins15110664>; Schaefer, A.M., Yrastorza, L., Stockley, N., Harvey, K., Harris, N., Grady, R., Sullivan, J., McFarland, Reif, J.S. Exposure to microcystin among coastal residents during a cyanobacteria bloom in Florida. 2020. *Harmful Algae* 92: 101769 <https://doi.org/10.1016/j.hal.2020.101769>; Florida Atlantic University, FAU Seeks Participants for Study on Effects of Harmful Algal Blooms, at www.fau.edu/newsdesk/articles/habs-cape-coral-study.php.

²⁷⁴ See FDEP, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration, Nov. 4-7, 2019, 79, at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/November%202019%20Workshops%20Technical%20Documentation/NovPublicWorkshop10_29_19_Final%20Presentation.pdf.

²⁷⁵ See Kriebel, D., Tickner, J., Epstein, P., Lemons, J., Levins, R., Loechler, E.L., Quinn, M., Rudel, R., Schettler, T., Stoto, M. 2001. The Precautionary Principle in Environmental Science, *Environmental Health Perspectives*, 109(9): 871-876. A 1998 consensus statement on the precautionary principle listed four central components of the principle: 1) taking preventative action in the face of uncertainty; 2) shifting the burden of proof to the proponents of an activity; 3) exploring a wide range of alternatives to possibly harmful actions; and 4) increasing public participation in decision-making. *Id.* (citing Raffensperger C, Tickner J, eds. *Protecting Public*

be concerned about the high spatial and temporal variability in algal cell and toxin concentrations in addition to the potential lag time between sample collection and the dissemination of results,²⁷⁶ quantitative standards do not prevent the state from promptly notifying the public of a bloom when it is first observed.

Quantitative standards also demand a greater level of accountability from state agencies who must routinely monitor and report baseline conditions and assess whether state waters meet their designated uses and develop pollution control measures. Thus, numeric water quality criteria for recreational waters are necessary not only to provide the most informed human health advisories, but also to maintain and restore the quality of the state's waters.

Accordingly, EPA should adopt cyanotoxin criteria for the state of Florida. If the state truly has concerns regarding EPA's derivation of cyanotoxin thresholds, there is nothing preventing the state from adopting the more protective draft standards that were issued in 2016 or working with EPA to develop criteria that are best suited for the state's waters based on site-specific conditions or other scientifically defensible methods.²⁷⁷

3. The Proposed Use of Chlorophyll-a as a Proxy Does Not Meet the Requirements of the Act.

In failing to adopt water quality criteria for cyanotoxins, Florida's Department of Environmental Protection stated in its 2021 triennial review that chlorophyll-a could be used as a proxy instead.²⁷⁸

Water quality standards must contain "[w]ater quality criteria sufficient to protect the designated uses."²⁷⁹ These criteria must "be based on sound scientific rationale and must contain sufficient

Health and the Environment: Implementing the Precautionary Principle. Washington, DC: Island Press, 1999.).

²⁷⁶ See FDEP, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration, Nov. 4-7, 2019, 79, at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/November%202019%20Workshops%20Technical%20Documentation/NovPublicWorkshop10_29_19_Final%20Presentation.pdf; FDOH, Our Program and Partners, Bloom Monitoring and Notification, at <https://www.floridahealth.gov/environmental-health/aquatic-toxins/program-and-partners/index.html>.

²⁷⁷ See 40 C.F.R. § 131.11(b)(1).

²⁷⁸ See DIV. OF ENV'T ASSESSMENT & RESTORATION, FLA. DEP'T OF ENV'T PROT., TRIENNIAL

REVIEW OF FLORIDA'S WATER QUALITY STANDARDS 81–94 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/May%202021%20Workshop%20Technical%20Documents/MayPublicWorkshop3_19_21_All_Slides-FINAL%20PDF.pdf.

²⁷⁹ 40 C.F.R. § 131.6(c).

parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.”²⁸⁰

Chlorophyll is not an appropriate proxy for cyanotoxins or for characterizing impairment because the conditions that promote or suppress chlorophyll in water are different than the conditions that allow for cyanotoxins such as microcystin from cyanobacteria.

Studies have described the competitive advantage cyanobacteria have over phytoplankton under a variety of conditions, especially those being influenced by climate change and warming waters.²⁸¹ Cyanobacteria have adapted to maximize available light near the surface utilizing vacuoles for buoyancy whereas most phytoplankton contributing to chlorophyll concentration do not have this advantage.²⁸² Additionally, the presence of mat-forming cyanobacteria or very high cell densities in the water column would likely contribute to light limitation of co-occurring phytoplankton that may ultimately suppress sample chlorophyll concentrations.

High levels of tannins and other macrophyte-derived allelochemicals are found to inhibit phytoplankton that contribute to water column chlorophyll.²⁸³ Conversely, cyanobacteria proliferate in Florida waters such as the Caloosahatchee River and Lake Okeechobee with high tannins, allelochemicals, and other dissolved organic compounds (CDOM) derived from plant decomposition. Additionally, microcystin-producing *Microcystis* have been shown to have some resistance to macrophyte-derived allelochemicals that more negatively affect other phytoplankton species.²⁸⁴

Thus, *Microcystis* avoids light limitation by forming surface mats and appears to have some resistance to the same allelochemicals found in water bodies with relatively high tannins and dissolved organic plant derivatives that would more negatively impact groups of eukaryotic planktonic algae without similar adaptive strategies for dominance as cyanobacteria. In the example described, cyanobacteria would likely dominate the aquatic community and indirectly

²⁸⁰ *Id.* § 131.11(a)(1).

²⁸¹ Paerl, H.W., Fulton R.S. 2006. Ecology of Harmful Cyanobacteria. In: Graneli E., Turner J.T. (eds) Ecology of Harmful Algae. Ecological Studies (Analysis and Synthesis), vol 189. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-540-32210-8_8; Pearl, H.W. and J. Huisman. 2009. Climate change: a catalyst for global expansion of harmful cyanobacterial blooms. Environ Microbiol Rep. 2009 Feb; 1(1):27-37 <https://enviromicro-journals.onlinelibrary.wiley.com/doi/10.1111/j.1758-2229.2008.00004.x>; Zhang et al. 2020 Alteration of dominant cyanobacteria in different bloom periods caused by abiotic factors and species interactions, J. Environ. Sci (China). 2021 Jan:99:1-9.

²⁸² Paerl and Fulton (2006).

²⁸³ Mulderij, G. 2006. Chemical warfare in freshwater-allelopathic effects on macrophytes on phytoplankton. ISBN: 90-9019798-2.

²⁸⁴ Dziallas, C. and Grossart, H.P. 2011. Increasing oxygen radicals and water temperature select for toxic *Microcystis* sp PLoS One 2011 6 e25569; Zilleges, Y. et al. The cyanobacterial hepatoxin microcystin binds to proteins and increases the fitness of *Microcystis* under oxidative stress conditions PLoS One 2011 6 e17615; Leunert, F. et al. 2014. Phytoplankton response to UV-generated hydrogen peroxide from natural organic matter. J Plankton Res. 2014 36 185 97.

suppress or outcompete phytoplankton, indirectly reducing water-column chlorophyll. In such a scenario chlorophyll would under-represent the potential impairment of recreation as a designated use.

For these reasons, the state's reliance on chlorophyll-a as a proxy for cyanotoxin is not based on "sound scientific rationale," does not "contain sufficient parameters or constituents to protect the designated use;" and does not "support the most sensitive designated use of the water body."²⁸⁵ The state's reliance on chlorophyll-a is therefore inconsistent with the requirements of the Act, and the EPA should make a determination that federal cyanotoxin standards are warranted.

4. The State Has Failed to Update Criteria as Required By Section 303(C)(2)(B) in its Triennial Review and Otherwise Explain Why Adoption of EPA Recommended Criteria is Not Warranted.

Section 303(C)(2)(B) of the Act requires all states to initiate and complete a triennial review of their water quality standards and submit their reviews to EPA. Five years after initiating its triennial review, the State of Florida has still not completed the process, much less explained to EPA why cyanotoxin standards should not be adopted. As the EPA points out in its Water Quality Handbook, it is important to explain the state's rationale to the public and to be transparent in its decision-making process.²⁸⁶

As the EPA explained in its 1992 decision to promulgate a final rule to establish water quality standards for priority toxic pollutants in 14 states," excessive delay subverts the entire concept of the triennial review cycle which is intended to combine current scientific information with the results of previous environmental control programs to direct continuing progress in enhancing water quality."²⁸⁷ Since at least the early 1990's, it has been EPA's position that Sections 303(c)(1)("triennial reviews") and 303(c)(4)(B)("necessity" determinations) should be read and used in concert to eliminate state delays and compel action.²⁸⁸

Although Florida may believe that delay is excusable because EPA's recommended criteria may not cause any additional waters in Florida to be listed as impaired in the short term,²⁸⁹ cyanotoxin standards are necessary not only to restore and protect these waters but to also ensure that the state's remaining waters will not be impaired in the future. Given the crisis gripping the state, it is not an issue of "if" but "when" more waters will become impaired unless water quality standards are adopted. Thus, the adoption of cyanotoxin standards is necessary to meet the

²⁸⁵ 40 C.F.R. § 131.11(a)(1).

²⁸⁶ EPA, Water Quality Standards Handbook, Chapter 3: Water Quality Criteria, 3 (Dec. 2023).

²⁸⁷ U.S. Env'tl. Prot. Agency, Water Quality Standards; Establishment of Numeric Nutrient Criteria for Priority Toxic Pollutants; States' Compliance, 57 Fed. Reg. 60848 (Dec. 22, 1992).

²⁸⁸ *Id.*

²⁸⁹ See FDEP, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration, Nov. 4-7, 2019, 79, at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/Standards/Triennial%20Review%202019-2021/November%202019%20Workshops%20Technical%20Documentation/NovPublicWorkshop10_29_19_Final%20Presentation.pdf.

requirements and fulfill the purposes of the Act (i.e. to both restore those waters already impaired by cyanotoxins as well as *maintain* the chemical, physical, and biological integrity of those waters that are not currently impaired).²⁹⁰

B. Promulgating a Federal Standard is Good Public Policy.

1. Florida's Residents and Visitors Must be Fully Protected from Cyanotoxins.

According to a 2021 Gallup poll, water pollution remains the top environmental concern in the United States and the majority of those polled express a “great deal” of worry about the pollution of both drinking water and rivers, lakes and reservoirs.²⁹¹

Human health-based water quality criteria serve as an informational resource for the public to better understand the types of pollution impacting our country's waterways and the risks they pose to human health. These criteria represent a quality of water that supports a particular use, such as for human consumption or for recreation. When certain criteria are exceeded, such as when there are high levels of bacteria or toxic pollutants, these waters can pose a threat to human health. Multiple studies present evidence linking the presence of these harmful cyanobacterial blooms with numerous public health maladies, including gastrointestinal distress, liver diseases, and neurological disorders. Given the dangers posed by cyanotoxins, the lack of water quality criteria for cyanotoxins obscures the harm inflicted on people (including Petitioners' members) using these waters to recreate. In consideration of these threats, conservation organizations, members of the public, local governments, a U.S. Congressman, and the state's very own Blue-Green Algae Task Force, have voiced their support of water quality criteria for cyanotoxins.²⁹²

²⁹⁰ See 33 U.S.C. § 1251(a).

²⁹¹ Megan Brenan, Water Pollution Remains Top Environmental Concern in U.S. (April 19, 2021), at <https://news.gallup.com/poll/347735/water-pollution-remains-top-environmental-concern.aspx>. A 2016 survey of Florida residents also reported that respondents found water quality to be an issue of high importance and believed water quality had not changed, with the quality of bays getting worse. See Leal, A., Rumble, J.N., Lamm, A.J. (2015). Setting the Agenda: Exploring Florida Residents' Perceptions of Water Quality and Quantity Issues,” Journal of Applied Communications: Vol. 99; Iss. 3. <https://doi.org/10.4148/1051-0834.1058>.

²⁹² See, e.g., Letter from Center for Biological Diversity, Sanibel-Captiva Conservation Foundation, Calusa Waterkeeper, Sierra Club, Natural Resources Defense Council, Surfrider Foundation, Friends of the Everglades, Waterkeeper Alliance, and Bullsugar (now VoteWater), to Kaitlyn Sutton, Florida Department of Environmental Protection (Nov. 18, 2019) (Exhibit 7); Letter from Don Donaldson, Deputy County Administrator, Martin County, Florida to Kaitlyn Sutton, Florida Department of Environmental Protection, (May 30, 2019) (Exhibit 8); Florida Blue Green Algae Task Force Consensus Document #1 (Exhibit 6). U.S. Representative Brian Mast has also referenced the 2019 Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin in his comments on the dangers posed by toxic algae blooms in Lake Okeechobee. See Amy Bennett Williams, How much algae toxin is too much? Environmental groups urge EPA to adopt stricter guidelines for recreational exposure, The News-Press (May 23, 2019), at <https://www.news-press.com/story/tech/science/environment/2019/05/23/how-much-blue-green-algae-toxin-too->

For example, on May 30, 2019, Martin County wrote to the FDEP requesting that it include EPA's final recommended criteria for microcystins and cylindrospermopsin in its rulemaking during the triennial review process. The County explained:

As a local government with Class III and designated Outstanding Florida Waters (Jensen Beach to Jupiter Inlet and North Fork St. Lucie River Aquatic Preserves), the County needs to be able to communicate with the public about the quality of the water that is of vital importance to the health and wellbeing of its residents, visitors, and the sustainability of the overall economy. Our residents and visitors expect a high and consistent level of protection in our surface waters. Martin County believes that surface water quality standards help to achieve those protections. (Exhibit 8).

Given the inadequacies of the existing monitoring and public notification frameworks, water quality criteria would provide much needed transparency and accountability to the state's water quality program.

2. Improved Water Quality Will Result in Substantial Economic Benefits.

In addition to providing much stronger protections for human health, the promulgation of water quality criteria for cyanotoxins will lead to improved water quality, which carries with it significant recreational and economic benefits to the state. Outdoor recreation, including recreational fishing, hunting, and wildlife-viewing generate \$10.1 billion annually for Florida's economy.²⁹³ Nutrient pollution and HABs can have significant impacts to state and local economies, including loss of recreational revenue, impacts to commercial fisheries, recreational fishing, and tourism, decreased property values, and increased drinking-water treatment costs.²⁹⁴

For example, harmful algal blooms may be responsible for a significant decline in the number of spotted sea trout caught by commercial fisherman and recreational anglers in Florida waters, particularly in areas most impacted by the discharges of algal laden water from Lake Okeechobee.²⁹⁵ According to statewide commercial landing data, the combined catch dropped

much-epa-issues-guidelines-recreational-exposure-two-common-vari/1203815001/. In a July 2020 Blue Green Algae Task Force meeting, Rep. Mast asked the Task Force to recommend that the State adopt EPA's Final Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins. See Department of Environmental Protection Blue-Green Algae Task Force Part 1 (July 29, 2020), at <https://thefloridachannel.org/videos/7-29-20-department-of-environmental-protection-blue-green-algae-task-force-part-1/>.

²⁹³ Florida Fish and Wildlife Conservation Commission, Economic Impact of Outdoor Recreation, at <https://myfwc.com/conservation/value/outdoor-recreation/> (last visited May 13, 2019).

²⁹⁴ Graham, et al. (2016); Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. Freshwaters: Analysis of Potential Economic Damages. *Environmental Science and Technology* 43(1):12-19.

²⁹⁵ Killer, E. 2019. Trout trouble? Statewide water issues likely to result in reduced bag limit for spotted seatrout. TC Palm (Apr. 26, 2019).

from 79,274 pounds in 2012 to 21,926 pounds in 2017.²⁹⁶ The commercial value of trout plummeted from \$174,087 in 2012 to \$62,801.²⁹⁷ Far fewer fish are being caught per trip, with 49.5 pounds per trip in 2012 to 18.5 pounds per trip in 2017.²⁹⁸ The most alarming losses are along the East coast from Volusia to Martin Counties, which experienced an 82% catch decline from 2012 to 2017 and in Lee and Charlotte Counties, where the catch suffered a 96% loss from 2012 to 2018.²⁹⁹ The precipitous decline in the harvest of spotted sea trout, which reside year-round in Florida's coastal estuaries, prompted FWC staff to recommend a reduction in bag limits for recreational anglers.³⁰⁰

Harmful cyanobacteria blooms may also have a significant adverse impact on property values throughout the state. In 2015, a Florida Realtor's study found changes in the water quality of the St. Lucie Estuary, Loxahatchee Estuary, and a portion of the Indian River Lagoon north of the St. Lucie Inlet, as measured by changes to one-year average Secchi disk depth,³⁰¹ resulted in an estimated \$488 million reduction in Martin County's aggregate property value between May 1, 2013 and September 1, 2013.³⁰² The study further found that a one-foot loss of Secchi disk depth in Lee County would be associated with an estimated loss of \$541 million.³⁰³

A 2023 study found that if Charlotte, Lee, and Collier Counties experienced another harmful algal bloom similar to the HABs experienced in 2005 and 2018, the area would lose over \$460 million in commercial and recreational fishing, over 43,000 jobs, \$5.2 billion in local economic output, \$17.8 billion in property values with an associated \$60 million in property tax revenue, and \$8.1 billion in the value of outdoor recreation.³⁰⁴

While EPA does not need to evaluate the economic impacts of promulgating water quality criteria for cyanotoxins in Florida before determining under section 303(c)(4)(B) of the Act that such standards are warranted, these and other studies demonstrate the quantifiable benefits of improving water quality for the state's wildlife, inland and coastal communities, and local economies.

3. EPA Must Provide a Backstop When the State Fails to Uphold its End of the Bargain.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ A Secchi disk is an 8-inch disk that is slowly lowered into the water until it is no longer visible to the naked eye, at which point the depth of the disk is recorded. Florida Realtors. 2015. The Impact of Water Quality on Florida's Home Values, Final Report, v, March 2015, available at https://www.floridarealtors.org/sites/default/files/2018-11/FR_WaterQuality_Final_Mar2015_1.pdf.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ Impacts of Water Quality on the Southwest Florida Economy, Final Report, vi, Green Economics (Dec. 20, 2023), available at [Economic Impact of Water Quality Study | Sanibel-Captiva Conservation Foundation \(sccf.org\)](https://www.sccf.org/EconomicImpactofWaterQualityStudy).

The Clean Water Act operates within a framework wherein the EPA and states work together to clean the nation's waters.³⁰⁵ Under this framework, federal money is made available to the state contingent on its creation of a regulatory scheme that is at least as stringent as federal requirements. States can tailor federal standards like water quality criteria, establish compliance strategies, implement permitting programs, and enforce rules.³⁰⁶

A carrot-and-stick approach, however, is fundamental to cooperative federalism, as the federal government can offer significant incentives to states for implementing the Act but can also impose federal requirements when state regulations do not meet the requirements of the Act.³⁰⁷ Congress made federal oversight a key component of the cooperative federalism framework embodied by the Clean Water Act because, prior to the passage of the statute, water pollution strategies were left up to the states with the federal government providing financial assistance.³⁰⁸ For twenty-five years leading up to the 1972 amendments to the Clean Water Act, few states set water quality standards, much less enforced them.³⁰⁹

Thus, the Clean Water Act's goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters"³¹⁰ is dependent on a cooperative relationship between EPA and the State of Florida. State inaction results in unnecessary delays in achieving this goal.³¹¹ Here, the state has failed to uphold its end of the bargain and follow the requirements of the Clean Water Act. It has been five years since the state was required to perform its triennial review of water quality criteria and five years since EPA issued final recommended criteria for cyanotoxins. As of today, EPA has still not received the state's triennial review, nor an adequate explanation as to why cyanotoxin standards should not be adopted by the state. All the while, Florida's waters continue to be harmed by wide-spread harmful algal blooms.

It is in circumstances like these that Congress envisioned the EPA exercising its oversight responsibilities and promulgating federal standards where state standards are absent and other pollution controls remain inadequate.³¹² To do so, would not only protect the state's residents and

³⁰⁵ *American Farm Bureau v. Fed'n v. United States EPA*, 792 F.3d 281, 288 (3rd Cir. 2015).

³⁰⁶ See Robert L. Fischman, *Cooperative Federalism and Natural Resources Law*, 14 N.Y.U. Envtl. L. J. 179, 189 (2005).

³⁰⁷ See *id.*

³⁰⁸ Oliver A. Houck, *Cooperative Federalism, Nutrients, and the Clean Water Act: Three Cases Revisited*, 44 ENVTL. L. REP. 10426, 10426 (2014).

³⁰⁹ *Id.*

³¹⁰ 33 U.S.C. § 1251(a).

³¹¹ Bonnie A. Malloy, *Testing Cooperative Federalism: Water Quality Standards Under the Clean Water Act*, 6 Env'tl & Energy L. & Pol'y J. 63, 100 (2011).

³¹² In its decision to promulgate a final rule establishing numeric nutrient criteria for priority toxic pollutants for 14 states, EPA explained that a strong argument against requiring EPA "to shoulder a heavy burden to exercise section 303(c)(4)(B) authority is that it would invert the traditional statutory scheme of EPA as national overseer and States as the entity with the greatest local expertise. CWA provides States the flexibility to tailor water quality standards to local conditions and needs based upon their wealth of first-hand experience, knowledge and data."

visitors from the toxic health effects of microcystins and cylindrospermopsin, but also maintain the balance of the cooperative federalism framework of one of our nation's landmark environmental laws.

4. EPA Must Move Expeditiously in Establishing Cyanotoxin Standards for Florida.

Petitioners submit that EPA must act expeditiously and that it is unnecessary to support the criteria in a rule on a water-body-by-water-body basis.³¹³ Florida has failed to fulfill its obligations to complete a triennial review of its water quality standards and submit its findings to EPA. Further, it has failed to act upon EPA's 304(a) recommended criteria for cyanotoxins and has offered no other scientifically defensible criteria in their place. The state has offered no indication when it intends to complete its review, much less issue any criteria aimed at reducing the presence of cyanotoxins in state waters. To ignore the state's failure to adhere to the requirements of the triennial review process set forth in 303(c)(1) and require additional studies, would simply reward inaction. Accordingly, EPA should promulgate a rule that applies to all Class I, Class II, and Class III waters in the state.

VIII. CONCLUSION

More than five years ago, Petitioners made a plea to the State of Florida to establish water quality standards for cyanotoxins. Our request, and similar requests from numerous conservation organizations, concerned citizens, local governments, elected officials, and others have gone unanswered.

However, this allowance for flexibility is based on an assumption of reasoned and timely State action, not an abdication of State responsibility by failure to act." (emphasis added). U.S. Env'tl. Prot. Agency, Water Quality Standards; Establishment of Numeric Nutrient Criteria for Priority Toxic Pollutants; States' Compliance, 57 Fed. Reg. 60848 (Dec. 22, 1992).

³¹³ EPA's decision not to engage in such a cumbersome, costly, and time-consuming process when it established numeric criteria for priority toxic pollutants for the State of California is instructive. As the EPA explained in its Final Rule, "To conduct research and studies of each stream segment or water body across the State of California to demonstrate that for each toxic pollutant for which EPA has issued CWA section 304(a) criteria guidance there is a 'discharge or presence' of that pollutant which could reasonably 'be expected to interfere with' the designated use would impose enormous administrative burden and would be contrary to the statutory directive for swift action manifested by the 1987 addition of section 303(c)(2)(B) to the CWA." Moreover, because these criteria are ambient criteria that define attainment of the designated uses, their application to all water bodies will result in additional controls on dischargers only where necessary to protect the designated uses. *See* Environmental Protection Agency, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 65 Fed. Reg. 31682, 31687 (May 18, 2000)(emphasis added).

We urge the EPA to honor the years of work the agency has dedicated to researching and developing its recommended criteria, appreciate the gravity of the crisis that is unfolding in Florida, and exercise its Congressionally delegated powers to make a determination pursuant to the Clean Water Act, 33 U.S.C. § 1313(c)(4)(B), that:

- (1) new water quality criteria for cyanotoxins are necessary for Florida to protect designated uses, and
- (2) promulgate federal regulations applicable to Florida, pursuant to 33 U.S.C. § 1313(c)(4), setting forth new water quality criteria for microcystins and cylindrospermopsin, as necessary to meet the requirements of the Act.

Doing so will undoubtedly help protect residents and visitors from the wide-spread harm being inflicted by harmful algal blooms all across our state.

Sincerely,

Jason Totoiu
Senior Attorney
Center for Biological Diversity

Sanibel-Captiva Conservation Foundation

Capt. Codty Pierce
Calusa Waterkeeper
Calusa Waterkeeper, Inc.

Eve Samples
Executive Director
Friends of the Everglades

Sarah Gledhill
President and Chief Executive Officer
Florida Wildlife Federation

List of Exhibits

- Exhibit 1: Petition for Rulemaking, From the Center for Biological Diversity, Sanibel-Captiva Conservation Foundation, and Calusa Waterkeeper to Florida Department of Environmental Protection and Environmental Regulation Commission to Establish Water Quality Standards for Cyanotoxins in Florida Surface Waters (May 23, 2019).
- Exhibit 2: State of Florida, Department of Environmental Protection, In Re: Petition to Initiate Rulemaking to Establish Water Quality Criteria for Cyanotoxins, OGC Case No. 19-0419, Order (June 25, 2019).
- Exhibit 3: Letter from Center for Biological Diversity, Sanibel-Captiva Conservation Foundation, Calusa Waterkeeper and Conservancy of Southwest Florida to Florida Department of Environmental Protection, Re: Comments on Triennial Review of Water Quality Standards (Cyanotoxin Criteria) (May 19, 2021).
- Exhibit 4: Florida Department of Environmental Protection, Notice of Development of Rulemaking (Fla. Admin. Register, Vol. 45, No. 62).
- Exhibit 5: Florida Department of Environmental Protection, Triennial Review of Florida's Water Quality Standards, Division of Environmental Assessment & Restoration (May 5, 2021).
- Exhibit 6: Florida Blue Green Algae Task Force Consensus Document #1.
- Exhibit 7: Letter from Center for Biological Diversity, Sanibel-Captiva Conservation Foundation, Calusa Waterkeeper, Sierra Club, Natural Resources Defense Council, Surfrider Foundation, Friends of the Everglades, Waterkeeper Alliance, and Bullsugar (now VoteWater), to Kaitlyn Sutton, Florida Department of Environmental Protection (Nov. 18, 2019).
- Exhibit 8: Letter from Don Donaldson, Deputy County Administrator, Martin County, Florida to Kaitlyn Sutton, Florida Department of Environmental Protection, (May 30, 2019).

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST City Commission

Meeting Date: 5/28/2024

Prepared by: Ben Hogarth

Title of Item:

OYSTER GARDEN PROJECT ALONG THE DOWNTOWN RIVERWALK WITH THE CCA (RC):

RESOLUTION No. 53-2024; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE COASTAL CONSERVATION ASSOCIATION (CCA) OF FLORIDA TO COORDINATE THE INSTALLATION OF VERTICAL OYSTER GARDENS ALONG THE DOWNTOWN RIVERWALK FOR THE PURPOSE OF IMPROVING WATER QUALITY AND PROVIDING SAFE HABITAT FOR OYSTERS AND OTHER MARINE LIFE; FURTHER AUTHORIZING THE CCA TO MAINTAIN, MONITOR AND COLLECT DATA FROM THE OYSTER GARDENS AS STEWARDS OF THE ENVIRONMENT AND THE PUBLIC TRUST; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The Palm Beach Chapter of the Coastal Conservation Association (CCA) of Florida contacted Commissioner McDonald and City staff in April regarding a prospective Oyster Garden Project along the City Riverwalk (Boardwalk). The project would include the installation of up to 300 Vertical Oyster Gardens (VOG) spaced approximately 10 feet apart, along the length of the downtown boardwalk. CCA volunteers and members would coordinate the deployment of the VOG and maintain, monitor, and collect data in perpetuity. According to representatives from CCA, all the shells used will be from the CCA Oyster Recycling Program. The Clermont Oyster Bar donates all of their shells to the CCA, and they are stored at the CCA oyster site in Lakeland. The purpose of this process is to dry out and kill off any organic growth before deployment for restoration projects, which is a best management practice.

The proposed VOG project comes at no cost to the City and will benefit water quality in and around the boardwalk and the St. Lucie River. The purpose of VOG is to provide habitat for oysters where they otherwise may struggle to propagate. When there is a die-off of oysters due to natural or man-made water quality deterioration, oyster beds can break apart and become covered by sand, limiting or eliminating their ability to return. VOG are vertically-aligned shells and material hung from a natural rope or object that hangs higher in the water column, ensuring a habitat for oysters after die-off events. Once installed, the VOG will begin to collect oyster larvae (spat) and each oyster garden will become home to hundreds of oysters and other sessile species. These oysters will have the capacity to treat up to 50 gallons of water per day and will likely treat billions of gallons of water throughout their lifespan.

If approved, City staff will coordinate with CCA members and volunteers to ensure the deployment of VOG does not negatively impact City infrastructure or property. The CCA will monitor and collect data, maintaining the VOG following the installation along the boardwalk pursuant to best management practices and applicable state and federal laws.

Funding Source:

N/A

Recommended Action:

Motion approval of Resolution No. 53-2024

ATTACHMENTS:

1. R53-2024 Authorizing an Oyster Garden Project along the Downtown Riverwalk with the CCA
2. Stuart VOG project - One pager



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

RESOLUTION NUMBER 53-2024

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE COASTAL CONSERVATION ASSOCIATION OF FLORIDA TO COORDINATE THE INSTALLATION OF VERTICAL OYSTER GARDENS ALONG THE DOWNTOWN RIVERWALK FOR THE PURPOSE OF IMPROVING WATER QUALITY AND PROVIDING SAFE HABITAT FOR OYSTERS AND OTHER MARINE LIFE; FURTHER AUTHORIZING THE CCA TO MAINTAIN, MONITOR AND COLLECT DATA FROM THE OYSTER GARDENS AS STEWARDS OF THE ENVIRONMENT AND THE PUBLIC TRUST; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City of Stuart, Florida is a committed environmental steward dedicated to the restoration of natural habitat and improvement of water quality for all; and

WHEREAS, since its inception in 1977, the Coastal Conservation Association (CCA) of Florida has advised and educated the public on the conservation of marine resources while further promoting and enhancing marine resources through collaborative programs and projects; and

WHEREAS, the Palm Beach Chapter of the CCA of Florida has graciously offered to coordinate with its volunteer groups to facilitate the installation of up to three hundred (300) Vertical Oyster Gardens (VOG) along the downtown riverwalk (boardwalk); and

WHEREAS, the installation of VOG along the boardwalk will require volunteers creating “oyster ropes,” which are dead and dried oyster shells that have been strung onto natural rope that will be placed into the water column and hung from the boardwalk; and

WHEREAS, the CCA and its volunteers will provide all materials and assembly of the oyster ropes and VOG, to be coordinated with City staff to ensure safe and acceptable use of the boardwalk structure for the intended purpose of the project; and

WHEREAS, following the successful placement of the oyster gardens, the CCA will be responsible for maintaining the VOG pursuant to acceptable management practices and compliance with state and federal laws, which will also include regular monitoring and data collection; and

WHEREAS, one of the most devastating contributors to poor oyster retention and spawning rates are impacts to oyster beds caused by sand and other tidal forces that cover the beds preventing future oysters from making them a suitable habitat; and

WHEREAS, the proposed VOG project creates habitat at the correct level in the water column ensuring new oysters can survive and thrive even after oyster die-offs; and

WHEREAS, the City Commission of the City of Stuart believes that the VOG project as envisioned by the CCA of Florida serves a critical public purpose and will improve water quality and natural habitat for marine life in the St. Lucie River.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The City Commission of the City of Stuart, Florida authorizes the CCA of Florida to coordinate with City staff under the direction of the City Manager to facilitate the installation of up to three hundred (300) VOG along the boardwalk at a time proper and convenient for both parties, in a manner appropriate to ensure the integrity of the boardwalk structure and consistent with best management practices pursuant to state and federal laws.

SECTION 2: Upon successful installation of the VOG, the CCA of Florida and its Palm Beach Chapter are hereby authorized to maintain the oyster gardens according to applicable laws, rules and regulations including the long-term monitoring and collection of data.

Resolution No. 53-2024
Authorizing an Oyster Garden Project along the Downtown Riverwalk with the CCA

SECTION 3: This resolution shall take effect upon adoption.

Commissioner _____ offered the foregoing resolution and moved its adoption.

The motion was seconded by Commissioner _____ and upon being put to a roll call vote,
the vote was as follows:

REBECCA S. BRUNER, MAYOR
CAMPBELL RICH, VICE MAYOR
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED this ____ day of _____, 2024.

ATTEST:

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

LEE J. BAGGETT, ESQ.
CITY ATTORNEY

City of Stuart Vertical Oyster Garden Project

CCA Florida is teaming up with the City of Stuart to launch a new Vertical Oyster Garden (VOG) project. This project is designed to enhance local water quality and provide information on current recruitment status, and we would greatly appreciate your interest and participation. Below, please find an outline of the vision and project expectations.

Vision:

Oysters are an ecological keystone species in Florida found in estuaries along the Atlantic Ocean and Gulf of Mexico. Oysters are natural filter feeders and have the ability to filter up to 50 gallons of water per day, removing algae and harmful pollutants. Oyster reefs provide crucial habitat for hundreds of different species and serve as foraging grounds for larger predators. Vertical Oyster Gardens (VOGs) are constructed of recycled oyster shells strung together with natural twine. This project will initially deploy approximately 300 VOGs along the Riverwalk boardwalk and fishing pier located in downtown Stuart. CCA Florida staff and members of the CCA Martin chapter will help monitor the VOGs to determine the success of the project. CCA Florida is planning to connect with a local university to incorporate some research into the project that will provide us with important information.

Expectations:

Hundreds of VOGs will be deployed from the boardwalk and fishing pier spanning the intertidal zone that a local oyster would naturally experience. In effort to maximize the potential and receive the most accurate data, please do not make adjustments to the VOG placement, as this could adversely affect the results. Once deployed, the VOGs will begin to collect oyster larvae (spat) and each VOG will become home to hundreds of oysters and other sessile species. These VOGs will have the potential to filter billions of gallons of water throughout their lifespan which will help improve local water quality. As the project progresses, VOGs will be monitored on a regular basis to determine the volume of oyster spat recruitment. Some areas could have overwhelming oyster growth and other locations may have none. Generally, areas that have oysters visible on seawalls, pilings and shorelines will have a better chance for growth, as they will be the source for the oyster seed. This data will provide important information that can help determine the most suitable sites for future oyster reef restoration projects.

The success of this project is based on the gathering of this important data. Once again, we thank you for your participation and your interest in CCA Florida's project.

Project Contact: Logan Kennovin, Assistant Director of Habitat and Environmental Restoration – CCA Florida, Lkennovin@ccaflorida.com

CITY OF STUART, FLORIDA

AGENDA ITEM REQUEST

City Commission

Meeting Date: 5/28/2024

Prepared by: Jodi Nentwick

Title of Item:

CLARITY POINTE PUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT LOCATED AT 500 SE INDIAN STREET (LEGISLATIVE) (RC):

ORDINANCE No. 2529-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCEL OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

The Petition requests a Small-Scale Future Land Use Amendment from the Multi-Family Residential (MF/RES) District to a Commercial (COMM) District to align with an inpatient rehabilitation facility located at 500 SE Indian Street situated on the south side of SE Indian Street, approximately 580 feet east of the intersection of SE Kanner Highway and SE Indian Street.

A concurrent Petition to rezone the existing Residential Planned Unit Development (RPUD) for a Mixed-Use Planned Unit Development (MXPUD) was also submitted to incorporate a 9.46-acre parcel within the existing 11.27-acre Clarity Pointe PUD, as authorized by the City Commission via Ordinance No. 2340-2017, to convert the former 84-bed ALF with memory care into a 140-bed inpatient mental health, drug, and alcohol rehabilitation facility with medical detox.

Funding Source:

N/A

Recommended Action:

The City Commission to consider a motion of approval for the adoption of Ordinance No. 2529-2024.

ATTACHMENTS:

1. Ordinance 2529-2024 - FLUMA
2. CC Staff Report - FLUMA
3. Small Scale Comp Plan Amendment Application
4. Small-Scale Comprehensive Plan Amendment Narrative
5. Traffic Statement
6. Clarity Pointe Traffic Review_2024-03-27
7. Survey
8. Draft LPA Minutes 3-14-2024



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2529-2024

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCEL OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

*** * * * ***

WHEREAS, on December 11, 1989, the City of Stuart City Commission adopted Ordinance Number 1174-89, adopting a Comprehensive Growth Management Plan as mandated by the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, also known as the City of Stuart Comprehensive Plan, that designated the Future Land Use of this property as Industrial; and

WHEREAS, on December 20, 2004, the City of Stuart City Commission adopted Ordinance No. 1984-04, amending the future land use designation of “Commercial” to “Multi-Family Residential” for a 15.24-acre property located at the southeast corner of S.E. Indian Street and South Kanner Highway in the City; and

WHEREAS, on September 26, 2005, the City of Stuart City Commission adopted Ordinance No. 2042-05, to rezone an 11.27-acre property on the south side of S.E. Indian Street east of the intersection with South Kanner Highway to establish the Villagio Residential Planned Unit Development (RPUD) for “Villagio”, declaring the RPUD development to be consistent with the Comprehensive Plan of the City; revising the zoning map accordingly; approving certain development documents; approving certain conditions of development; and repealing all ordinances; and

WHEREAS, on January 6, 2017, the City of Stuart City Commission approved Ordinance No. 2340-2017 which granted Commercial Planned Unit Development (CPUD) zoning for the subject property for that certain 1.92 acres of land located on the south side of S.E. Indian Street approximately 580 feet east of the intersection of S.E. Kanner Highway and S.E. Indian Street; and the City of Stuart City Commission approved a site plan for the 9.35-acre RPUD by Ordinance 2340-2017 for the development of Clarity Pointe Assisted Living Facility on the RPUD portion of the PUD; and

WHEREAS, on May 22, 2017, the City of Stuart City Commission adopted Ordinance No. 2344-2017, for the abandonment of that certain 40-foot public right-of-way within the City, as set forth on the Plat of Stuart Farms, as recorded in Plat Book 1, Page 63, Martin County, Florida Public Records running north to south through the property; and

WHEREAS, on January 8, 2018, the City of Stuart City Commission adopted Resolution No. 06-2018, approving the Plat titled “Clarity Pointe” prepared by Peter Andersen, a Florida Professional Mapper No. 5199; and

WHEREAS, on March 26, 2018, the City of Stuart City Commission adopted Ordinance No. 2369-2018, amending a 1.92-acre Commercial Planned Unit Development (CPUD) and a 9.35-acre Residential Planned Unit Development (RPUD) agreement known as the Clarity Pointe

PUD, adopted by Ordinance No. 2340-2017, thereby approving a site plan for the 1.92-acre CPUD parcel to construct 16,000 square feet of commercial; approving certain conditions of development specific to the CPUD; providing for timetables of the development; and

WHEREAS, on February 9, 2024, an application was submitted to the City of Stuart for a Small-Scale Comprehensive Plan Future Land Use Map Amendment to assign the Multi-Family Residential (MF/RES) District Future Land Use to the Commercial (COMM) Future Land Use designation; and

WHEREAS, the City of Stuart Local Planning Agency (LPA) Board held a properly noticed hearing at a regularly scheduled meeting on March 14, 2024, to consider the Applicant's request and voted to recommend approval of the subject Petition to the City Commission; and

WHEREAS, the City Commission held a public hearing at a regularly scheduled City Commission Meeting, with public notice having been properly provided, and considered all oral and written comments received during the public hearings, the Application by Jason Ackner, Perseverance Recovery Center, LLC (Applicant) representing a 9.46-acre parcel of land, the analysis by the City's Development Department and recommendation of the City's LPA; and

WHEREAS, the City of Stuart has determined the need to reassign the Future Land Use designation for said land; and

WHEREAS, the City Commission has reviewed the criteria set forth in Section 163.3177, Florida Statutes and has evaluated the data, testimony, evidence, public comments, and totality of the circumstances. The City Commission has determined which data is professionally acceptable and has reacted accordingly. Pursuant to the data available at the time, the Commission has found that the character of the land is appropriate for the subject request and that adequate public facilities exist to support the land use; and

WHEREAS, based on the evidence presented by the Applicant regarding the maximum build-out of the existing and proposed Future Land Use designations, the Commission finds that the proposed use is an appropriate Future Land Use for the subject property; and

WHEREAS, the Applicant has committed to the City that its development will comply with all development codes, plans, standards, and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon approval of the Future Land Use Amendment; and

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law; and

WHEREAS, the property is legally described in “**Exhibit A**” attached hereto of this Ordinance. A map depicting the property is attached hereto as **Exhibit “B”** and made a part hereof by reference.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The Future Land Use designation in the City's Comprehensive Land Use Plan shall be "Commercial".

SECTION 2: This Ordinance becomes effective upon adoption.

SECTION 3: All Ordinances or parts of Ordinances in conflict with this Ordinance or any part thereof is hereby repealed to the extent of such conflict. If any provision of this Ordinance conflicts with any contractual provision between the City and the Developer of the site, this Ordinance shall prevail.

SECTION 4: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications that

can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 5: Following the adoption and acceptance of this Ordinance by the Owners, and in addition to any other action for failure to complete development or otherwise comply with the Development Documents, the City Development Director may obtain a hearing before the City Commission and shall thereupon give at least five (5) days written notice of the time, date, and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission, the Property Owner may appear and contest the allegation of the breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Development Documents and therefore, the Ordinance(s) adopting the same, the City Commission may impose or do any or all of the following:

- a. Initiate the process to amend or repeal this or any other ordinance pertaining to the development.
- b. Impose an administrative penalty of up to \$1,000.00 for each violation, and up to \$5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this Ordinance by the Property Owner shall be considered a violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 6: This Ordinance shall be effective upon the following to occur: adoption by the City Commission, and proper execution and acceptance by the Owner.

SECTION 7: Upon complete execution of this Ordinance, the City Clerk is directed to record this Ordinance in the Public Records of Martin County, Florida.

Ordinance No.: 2529-2024 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Small-Scale Comprehensive Plan Future Land Use Amendment

PASSED on first reading the ____ day of _____ 2024.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

REBECCA S. BRUNER, MAYOR
CAMPBELL RICH, VICE MAYOR
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this ____ day of _____ 2024.

ATTEST:

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

LEE J. BAGGETT, ESQ.
CITY ATTORNEY

EXHIBIT A – LEGAL DESCRIPTION

PARCEL 1:

LOT 1 CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA (RPUD TRACT)

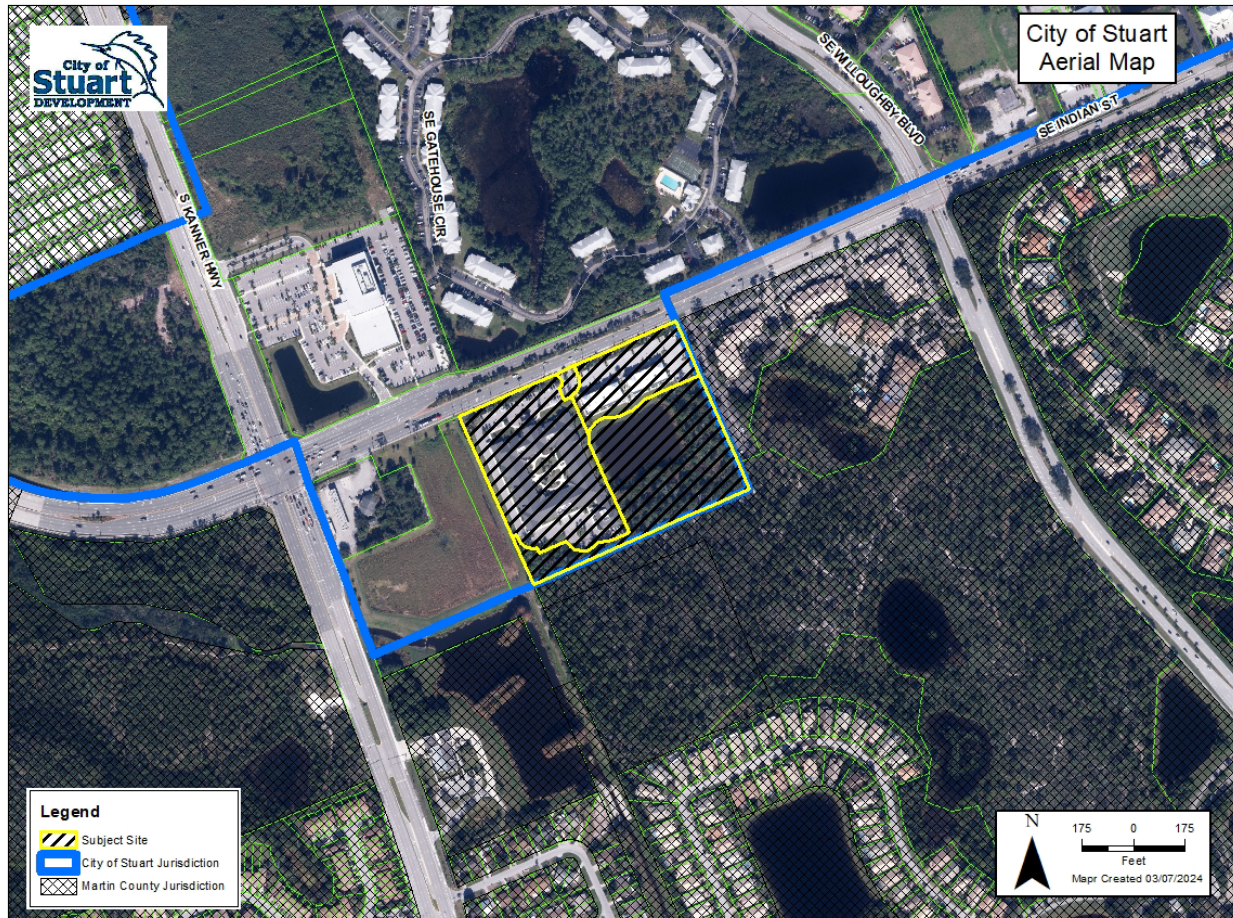
PARCEL 2:

COMMON AREA - UPLAND PRESERVE TRACT, LAKE TRACT, ACCESS TRACT - CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA

ADDRESS: 500 SE INDIAN STEET

PARCEL I.D. No.: 40-38-41-010-000-000-00010-0, 40-38-41-010-000-00001-0

EXHIBIT “B” – LOCATION MAP



To: City Commission
From: Jodi Kugler, Development Director
Date: March 14, 2024
Project Name: Ackner - 500 SE Indian Street (*aka Clarity Pointe PUD*)
Application Type: Small-Scale Comprehensive Plan Future Land Use Map Amendment

Property Owner: CP Stuart Development I, LLC
4300 Legendary Drive, Suite 234
Destin, FL 32541

Agent of Record: Connor Kennedy
Applicant Engineering Design & Construction, Inc
10250 SW Village Parkway, Suite 201
Port Saint Lucie, FL 34987

Jason Ackner
Perseverance Recovery Center, LLC
318 U.S. Highway 1, Suite 200
Jupiter, FL 34987

APPLICATION SUMMARY: The Applicant submitted a petition requesting approval of a rezoning from the existing Residential Planned Unit Development (RPUD) for a Mixed-Use Planned Unit Development (MXPPUD) with a concurrent site plan to incorporate a 9.46-acre parcel within the overall 11.27-acre Clarity Pointe PUD, as authorized the City Commission via Ordinance 2340-2017, to convert the former 84-bed Assisted Living Facility with memory care to allow for inpatient mental health and 140-bed residential drug, and alcohol rehabilitation facility with medical detox.

The Applicant submitted a concurrent petition for a Small-Scale Future Land Use Amendment from the Multi-Family Residential (MF/RES) District to a Commercial (COMM) District to align with an inpatient rehabilitation facility's proposed use.

The petition requesting a Small-Scale Future Land Use Amendment from the Multi-Family Residential (MF/RES) District to a Commercial (COMM) District to align with an inpatient rehabilitation facility located at 500 SE Indian Street situated on the south side of SE Indian Street, approximately 580 feet east of the intersection of SE Kanner Highway and SE Indian Street.

A concurrent petition to rezone from the existing Residential Planned Unit Development (RPUD) for a Mixed-Use Planned Unit Development (MXPUD) was also submitted to incorporate a 9.46-acre parcel within the existing 11.27-acre Clarity Pointe PUD, as authorized by the City Commission via Ordinance No. 2340-2017, to convert the former 84-bed ALF with memory care into a 140-bed inpatient mental health, drug, and alcohol rehabilitation facility with medical detox.

STAFF RECOMMENDATION: Staff is requesting Discussion and Direction from the City Commission.

LOCAL PLANNING AGENCY (LPA): The Local Planning Agency held a public hearing for the Small-Scale Comprehensive Plan Amendment petition on March 14, 2024, and voted to forward a recommendation of approval to the City Commission. The motion passed 3/1. Ms. Peterson voted nay.

PUBLIC NOTIFICATION: The Applicant mailed letters to owners located within 300 feet of the petition site, detailing the proposed project. A public notification sign was posted on the premises.

SITE DATA:

Location:	The subject property is located at 500 SE Indian Street situated on the south side of SE Indian Street, approximately 580 feet east of the intersection of SE Kanner Highway and SE Indian Street.
Property Control Number(s)	40-38-41-010-000-000-00010-0, 40-38-41-010-000-00001-0
Existing Future Land Use Designation:	Multi-Family Residential (MF/RES) District
Proposed Future Land Use Designation:	Commercial (COMM)
Existing Zoning District:	Residential Planned Unit Development (RPUD)
Proposed Zoning District:	Mixed-Use Planned Unit Development (MXPUD)
Total Acreage:	11.27
Affected Acreage:	9.46
Overlay District:	N/A
Existing Use:	84-bed Assisted Living Facility (ALF) with memory care
Proposed Use:	140-bed Inpatient Mental Health, Drug, and Alcohol Rehabilitation Facility with Medical Detox

PROJECT HISTORY:

Request	Resolution
Annexed into the City of Stuart and assigned to the Commercial (COMM) Future Land Use category in 1997	1997
Amend the Commercial (COMM) Future Land Use designation to Multifamily Residential (MF/RES) for an 11.27-acre property.	Ordinance 1984-2004
Established the Villagio Residential Planned Unit Development (RPUD) to construct a 66 multi-family development	Ordinance 2042-2005
Approved the rezoning of 11.27-acre to activate and amend the expired Villagio Stuart RPUD with a master plan to develop a one-story 96,713 square foot 84-bed ALF with memory care and create a 1.92-acre commercial outparcel as part of the overall 11.27-acres. Additionally, the 1.92-acre outparcel was assigned a Commercial (COMM) Future Land Use category and rezoned from RPUD to CPUD. The overall will be known as Clarity Pointe PUD and will consist of a 1.27-acre lake in the center of the property and 2.81-acre of preserved area. The 1.92-acre outparcel will front SE Indian Street and proposed retail uses.	Ordinance 2340-2017
Abandonment of the 40-foot right-of-way within the Clarity Pointe PUD	Ordinance 2344-2017
Approved the Plat for Clarity Pointe PUD and recorded with the Martin County Clerk of Courts, Book 17, Page 1 of 2.	Resolution 06-2018
Major Amendment to the CPUD Master Site Plan for the 1.92-acre commercial outparcel to construct two (2) 8,000 square foot buildings or leasable office space and general commercial space.	Ordinance 2369-2018

CONSISTENCY OF THE CITY OF STUART LAND DEVELOPMENT REVIEW

The City Commission is tasked with reviewing the proposed Small-Scale Comprehensive Plan Future Land Use Map Amendment with a recommendation of denial, approval, or approval with conditions.

The City of Stuart Development Department has reviewed the submitted petition per the Standards of Review outlined under Section 11.01.07(G) of the City of Stuart Land Development Code (LDC) and is providing its findings below.

a. The existing land use pattern.

Staff Findings: The adjacent Commercial (COMM) is part of the overall unified development with compatible uses under the previously approved PUD. The proposed Amendment of the Official Zoning Atlas is not in conflict with the applicable provisions of the Land Development Code, Comprehensive Plan, and Planned Unit Development Regulations.

ADJACENT LAND USE & ZONING:

Location		Zoning District	Future Land Use	Existing Land Use
Subject Property		<i>Residential Planned Unit Development (RPUD)</i>	<i>Multi-Family Residential (MF/RES)</i>	<i>Formal Assisted Living Facility (Clarity Pointe RPUD)</i>
Adjacent Parcels	North	Residential Planned Unit Development (RPUD)	Multi-Family Residential (MF/RES)	The Crossings Multi-Family Residential Development
	South	PUD-R (Residential) (Martin County Jurisdiction)	Low Density-up to 5 UPA (Martin County Jurisdiction)	Undeveloped / Vacant
	East	Commercial Planned Unit Development (CPUD)	Commercial (COMM)	Palmetto Edge Shopping Center
	West	Commercial Planned Unit Development (CPUD)	Commercial (COMM)	5-acre Drainage Tract

City of Stuart Comprehensive Plan Excerpts

Objective 1.A7 – Future Land Use Categories: Commercial: Land uses and activities predominately connected with the sale, rental, and distribution of products or performance of professional and non-professional services. Includes retail sales, service establishments, businesses, professional and other offices, shopping centers, financial institutions, restaurants, entertainment, hotels, motels, and other temporary lodging. A limited amount of Multi-Family Residential and indoor industrial use is allowed. Mixed-use projects are allowed. Also, public facilities and electric distribution substations are allowed.

Multi-Family Residential: One to three or more dwelling units per building. Includes single-family detached, duplex, townhomes, garden homes, foster homes, adult congregate living facilities of four or fewer unrelated residents, and zero-lot-line residences. Also, public facilities, churches, daycare centers, schools, and distribution substations are allowed.

Martin County Comprehensive Plan: Policy 4.13A.7 – Residential Development: Density Residential development. The Low-Density Residential designation is reserved for land in the Primary Urban Service District. Densities shall not exceed five units per gross acre. In reviewing specific densities, the aim shall be to preserve the stability and integrity of established residential development and provide equitable treatment to lands sharing similar characteristics. Landscaping, screening, buffering, and similar design techniques shall ensure a smooth transition between residential structure types and densities.

b. The possible creation of an isolated land use classification unrelated to adjacent and nearby classifications.

Staff Findings: The proposed commercial land use amendment and the adjacent land use are consistent and will not create an isolated land use classification to adjacent and nearby classifications. The proposed commercial land use allows for mixed-use temporary lodging and a limited amount of multi-family residential.

c. The population density pattern of the area and possible increase or overtaxing of the load on public facilities such as schools, utilities, and streets.

Staff Findings: The proposed amendment will decrease the population density pattern and is not anticipated to increase the load on public facilities, such as schools, utilities, and streets. The proposed use is considered temporary lodging in nature as opposed to assisted living facilities are considered permanent residences for the elderly population.

d. The possible overloading of the city's sewage collection, treatment, and disposal facilities.

Staff Findings: The proposed amendment has been reviewed by the City of Stuart Public Works Department which has determined the City of Stuart Public Works the existing sewage collection, treatment, and disposal facilities are adequate.

e. The possible overloading of the city's drainage system.

Staff Findings: The proposed amendment has been reviewed by the City of Stuart Public Works Department which has determined the existing drainage system is adequate.

f. The existing classification boundaries in relation to existing conditions on the subject property.

Staff Findings: The existing classification boundaries are compatible in relation to the existing conditions on the subject property.

g. The existence of changed or changing conditions that make the passage of the proposed amendment necessary or appropriate.

Staff Findings: The proposed amendment allows for “other temporary lodging” which aligns with the inpatient facilities within the City of Stuart's jurisdiction. Currently, the Multi-Family Residential land use category only defines adult congregate living facilities (ALFs) and does not address temporary lodging.

Multi-Family Residential: One to three or more dwelling units per building. Includes single-family detached, duplex, townhomes, garden homes, foster homes, adult congregate living facilities of four or fewer unrelated residents, and zero-lot-line residences. Also, public facilities, churches, daycare centers, schools, and distribution substations are allowed.

h. The impact of the proposed amendment on living conditions in the adjacent neighborhood.

Staff Findings: The proposed amendment is not anticipated to impact the adjacent neighborhood. The residential communities near the commercial portion of the site consist of the Crossing at Indian Run, Willoughby Crossroads, and Willoughby Golf Club. The Willoughby Crossroads is the most impacted but is already within a mixed-use development. The Crossings at Indian Run is buffered by a robust 30-foot opaque landscape buffer on the property along Indian Street, and the Indian Street right-of-way, as well as a preserve and retention area on the residential property. The Willoughby Golf Club is buffered not only by the site's 2.81-acre preserve area but is owned extensively by residential communities.

i. The impact of the amendment upon the flow of light and air to adjacent areas.

Staff Findings: The subject site is developed and would not create an adverse impact upon the flow of light and air to the adjacent areas.

j. The impact of the proposed amendment upon property values in the adjacent area.

Staff Findings: The impact of the proposed amendment is not anticipated to impact the property values within the adjacent area.

k. The impact of the proposed amendment upon improvement or development of adjacent property per existing regulations; and

Staff Findings: The adjacent properties situated to the north and east of the subject site are currently developed and include a variety of existing residential and commercial uses.

l. The existence of other adequate sites in the city for the proposed land use classifications already permitting such use.

Staff Findings: The subject property is within a half-mile radius of an existing 80-bed inpatient mental health facility and assigned a commercial land use category with mixed-use planned unit development zoning designation.

CONSISTENCY OF THE CITY OF STUART COMPREHENSIVE PLAN REVIEW

Plan amendments that qualify as Small-Scale Comprehensive Plan Amendments may follow the review process outlined under Florida Statute 163.3187. Such a request may be considered at any time by the City of Stuart without any frequency limit, according to the procedural requirements and thresholds detailed in Land Development Code Section 11.01.07.

The proposed Small-Scale Comprehensive Plan Future Land Use Map Amendment has been reviewed by the following Goals, Objectives, and Policies from the City of Stuart Comprehensive Plan:

ELEMENT 1 - FUTURE LAND USE ELEMENT

Policy 1.A3.2: *The City's Future Land Use Map and land development regulations shall direct development to areas where adequate utilities, services, and schools exist or are planned in order to protect natural resources.*

Policy 1.A3.3: *The City shall designate and protect environmentally sensitive lands including viable and functioning wetlands as determined by the SFWMD and native vegetative communities that provide wildlife habitat for listed species. Protection measures will include performance standards regulating land use, public access, marina siting and activities, wetlands, shoreland alteration and seawalls, treatment of stormwater runoff, mangrove protection, and provisions for developers to preserve environmentally sensitive land, including transfer of development rights and density bonuses.*

Policy 1.A5.3: *Wherever possible, medium-density residential and recreation/open space areas should serve as buffers between higher and lower-intensity residential uses to achieve an orderly land use transition.*

Policy 1.A6.3: *Future neighborhood commercial development that reduces vehicular trips shall:*

- a. Be clustered with other neighborhood commercial uses in a single location;*
- b. Be compatible in size, style, architecture, and materials with surrounding residential buildings;*
- c. Provide buffering from noise, light, and pollution;*
- d. Mixed-use development will be encouraged.*

Objective 1.A7 – Future Land Use Categories: *The future land use categories defined below provide general descriptions intended to encompass all present and future land uses in the City of Stuart. The "Table of Land Use Densities and Intensities" provides specific density and intensity measures that shall establish the maximum density and intensity allowed in each land use category. The Future Land Use Map establishes the optimum, overall distribution of land uses as well as can be established on a City-wide basis. Neither these policies nor the Future Land Use Map shall be construed to mean*

that every parcel in a designated area is suitable for the designated use. Other plan objectives and policies will be applied to ensure that any proposed development will be suitable for the particular site. Similarly, the Future Land Use Map does not assure the landowner the right to the most intense use allowable under the designated future land use category. The City shall have the discretion to decide that the permitted land use shall be more limited than the maximum allowable under the future land use category; provided that the City shall approve some development that is consistent with the City's plan.

Policy 1.A7.1: *The City of Stuart has designated the following land use categories and allowed uses for all land within the City of Stuart:*

Commercial: *Land uses and activities predominately connected with the sale, rental, and distribution of products or performance of professional and non-professional services. Includes retail sales, service establishments, businesses, professional and other offices, shopping centers, financial institutions, restaurants, entertainment, hotels, motels, and other temporary lodgings. A limited amount of Multi-Family Residential and indoor industrial uses is allowed. Mixed-use projects are allowed. Also, public facilities and electric distribution substations are allowed.*

Policy A.A7.3: *The term “mixed-use project” means one that allows for a mix of residential, non-residential, and recreational land uses such that a functional vertical or horizontal mix of uses is achieved. These uses may be mixed within a single building or on a single site, providing that any impacts are mitigated through urban design techniques.*

Objective 1.B1 – Compact Urban Form: *Discourage urban sprawl by facilitating urban redevelopment and infill development of properties and planning for urban infill and redevelopment of lands located within Stuart in order to achieve a compact urban form.*

Objective 1.B2 – Provision of Facilities and Services: *The Future Land Use Element shall establish land uses which can be served by existing and planned facilities and services. The plan shall achieve and maintain the level-of-service (LOS) standards adopted in the Capital Facilities Element and shall provide sufficient land suitable for public facilities needed to support the projected level and pattern of development.*

F.S.163.3177 - Plan amendment indicators assessed against the request for a Small-Scale Comprehensive Plan Amendment to change the land use from Commercial to Neighborhood/Special District:

YES/NO/NA	a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality to determine whether the plan or plan amendment:
NO	(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.
N/A	(II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development.
NO	(III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.
NO	(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

NO	(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.
NO	(VI) Fails to maximize the use of existing public facilities and services.
NO	(VII) Fails to maximize the use of future public facilities and services.
NO	(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire, and emergency response, and general government.
NO	(IX) Fails to provide a clear separation between rural and urban uses.
NO	(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.
NO	(XI) Fails to encourage a functional mix of uses.
NO	(XII) Results in poor accessibility among linked or related land uses.
No	(XIII) Results in the loss of significant amounts of functional open space.
b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:	
YES	(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact and protects natural resources and ecosystems.
YES	(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.
YES	(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.
N/A	(IV) Promotes conservation of water and energy.
N/A	(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.
NO	(VI) Preserves open space and natural lands and provides for public open space and recreation needs.
YES	(VII) Creates a balance of land uses based upon demands of the residential population

	for the nonresidential needs of an area.
NO	(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164

STAFF/CONSULTANT REVIEWS

City of Stuart Building Department: The City of Stuart Building Department does not have any comments regarding the proposed Small-Scale Comprehensive Plan Future Land Use Map Amendment.

City of Stuart Fire District: The City of Stuart Fire District does not have any comments regarding the proposed Small-Scale Comprehensive Plan Future Land Use Map Amendment.

Environmental Review: All Environmental requirements, including landscaping, were satisfied during the construction of the ALF.

Landscaping, Trees, and Upland Preserve: Landscape buffers have been provided on all sides of the property per the City's Land Development Code, which includes a 30-foot-wide landscape buffer along SE Indian Street, and a 15-foot landscape buffer along the eastern property line, consistent with the rest of the PUD.

Of the total PUD, approximately 58.31% will remain pervious, which includes open space, a preserve area, landscape buffers, and a courtyard used by the Clarity Pointe assisted living facility. The proposed landscaping area represents approximately 8.2% of the total area and offers variety, 75% native specimens, and 64% categorized as shade trees. Within the CPUD, 34,256 square feet of landscaping is provided, which is twice the minimum amount required (20% of gross area). The eastern buffer provides 9 shade trees, where 7 are required; and 15 shade trees are provided along Indian Street, where 14 are required.

Even so, tree replacement was required due to the proposed removal of 4,849.5" of slash pines and 1025" of other hardwoods at the adoption of the master PUD. The replacement mitigation proposed includes 1,602" of tree mitigation as planted trees and therefore 4,272.5" of mitigation will be required. The payment into the tree fund was required before the approval of vertical construction and has been paid to the city in full.

The existing vegetation on the site has been surveyed and reviewed by the City's Environmental consultant and the applicant has provided a Preserve Area Maintenance Plan (PAMP). The proposed plan preserves the required 25% upland preserve (or 2.61 acres) all on the RPUD and integrates existing vegetation into the buffers and landscape plan. To satisfy the City's Environmental consultant, the PAMP included five years of maintenance and the property owner shall be responsible for the maintenance of the preserve areas in perpetuity. There are no upland preserve areas in the CPUD portion of the PUD.

Wetland Mitigation: Although there are no wetlands on the CPUD portion of the PUD, the existing .88-acre wetland within the master PUD was replaced with a lake that will have littoral plantings and native wetland vegetation plantings amounting to a total of 10 square feet of coverage for every one linear foot of shoreline. Mitigation will be required for both the existing trees and the identified wetlands on site.

Furthermore, to promote compact urban development and discourage urban sprawl, the City allows Wetland impacts under certain conditions. The LDR at 5.03.02 B permits impact providing mitigation requirements are met. All mitigation will be carried out on-site.

WETLAND MITIGATION/WETLAND PRESERVE		
	Required	Provided
Native vegetation area	25%	27%
Wetland Area	A Wetland Area of 2.81 acres is preserved	
Wetland Preserve	Minimum 25ft with an average 50ft wetland buffer	Minimum 25ft with an average 50ft wetland buffer
Upland Preserve	25%	26.7%

New Traffic Review:

JFO Group, Inc. prepared a traffic statement (dated February 8, 2024) related to the above-mentioned project, in compliance with Section 4.05. of the City of Stuart Land Development. Based on the analysis below:

Project trip generation rates were based on the *Institute of Transportation Engineering (ITE) Trip Generation Manual 11th Edition*. When fitted curve equations were not available, weighted average rates were used. Similarly, when data plots had at least 20 data points and a fitted curve equation with an R2 of at least 0.75, fitted curve equations were used. Table 1 shows the rates used to determine the trip generation for Daily, AM, and PM peak hour conditions while Table 2 summarizes the net Daily, AM, and PM peak trips potentially generated by the existing and proposed development. Exhibit 4 includes excerpts from the ITE trip generation manual for ITE Land Use Code 254.

Table 1: Trip Generation Rates

Land Use	ITE Code	Daily Trip Gen.	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Assisted Living	254	2.60	60%	40%	0.18	39%	61%	0.24

There are 70 bedrooms at the existing facility which currently accommodates 84 beds. Given the proposed use on the subject site, a maximum of two (2) beds could be accommodated per bedroom. Therefore, to prepare a conservative analysis, it was assumed that a maximum of 140 beds could be operating on the subject site. Similarly, since ITE does not include trip generation rates for mental/drug rehab facilities and as part of a conservative analysis, it was assumed that for trip generation purposes the proposed facility will operate similarly to an assisted living facility.

Table 2: Trip Generation

Land Use	Intensity	Daily Traffic	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
EXISTING DEVELOPMENT								
Assisted Living	84 Beds	218	9	6	15	8	12	20
Net Existing Traffic		218	9	6	15	8	12	20
PROPOSED DEVELOPMENT								
Mental/Drug Rehab	140 Beds	364	15	10	25	13	21	34
Net Proposed Traffic		364	15	10	25	13	21	34
Net Traffic		146	6	4	10	5	9	14

The proposed changes to the 500 SE Indian St property have been evaluated following *Sec. 4.04.05 of the City of Stuart Land Development Code*. This analysis shows the proposed request to convert. an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility will generate less than 20 peak hour trips.

The City's Traffic Consultant, Kimley-Horn evaluated the trip generation of the existing site relative to the proposed use. The existing site currently operates as an assisted living facility, which is consistent with the previously approved traffic study. A mental health/rehab facility is proposed, which is similar to the existing use, with a maximum increase

from the existing 86 beds to 140 beds.

The proposed increase to a maximum of 140 beds has the potential to generate a net increase of 146 daily, 10 (6 entering, 4 existing) AM peak hour, and 14 (5 entering, 9 existing) PM peak hour trips. Based on the net change in peak-hour trips (< 20) a traffic study is not required per the City of Stuart Land Development Code Section 4.04.05. Furthermore, it should be noted that the change in Future Land Use (FLU) and Zoning designations do not increase traffic volumes as the proposed FLU and Zoning designations provide the same intensities as the existing FLU and zoning designations per the City of Stuart Comprehensive Plan and Land Development Code.



City of Stuart
121 SW Flagler Ave.
Stuart, FL 34994
development@ci.stuart.fl.us
(772) 288-5326

Received by: _____

Reviewed by: _____

Small-Scale Comprehensive Plan Amendment Application

Project ID# _____
(Staff Entry)

Pre-App Conference Date: January 25, 2024	Application Date: December 18, 2023
---	-------------------------------------

SITE INFORMATION

Project Name: Ackner - 500 SE Indian St	Parcel ID#: 40-38-41-010-000-00010-0 / 40-38-41-010-000-00001-0
Site Address: 500 SE Indian St, Stuart, FL 34994	
Subdivision: Plat of Clarity Pointe PLAT 17/68	Lot(s): Lot 1, Lake Tract, Upland Preserve Tract, Access Tract PLAT 17/68
Site Acreage: 9.46 Acres	Flood Zone/Base Flood Elevation: Flood Zone X
Existing Zoning District / CRA Subdistrict (if applicable): RPUD: Residential PUD	
Proposed Zoning District / CRA Subdistrict (if applicable): MXPUD: Mixed-Use PUD	
Current Comprehensive Plan Future Land Use Designation: Multi-Family Residential	
Proposed Comprehensive Plan Future Land Use Designation: Commercial	
Existing Land Use: Assisted Living Facility (ALF)	Proposed Land Use: Inpatient mental health, drug and alcohol rehab with medical detox
Proposed Square Footage (if applicable):	Proposed Density (if applicable):

PETITIONER INFORMATION

Property Owner: CP - Stuart Development I, LLC	Phone Number / Email Address: (850)-830-7425 rick@olsonlandpartners.com
Property Owner's Mailing Address: 4300 Legendary Drive, Suite 234, Destin FL 32541	
Applicant (if not Owner): Perseverance Recovery Center, LLC	Phone Number / Email Address: (561)-815-4478 Jason.Ackner@Phoenix-bhc.com
Applicant's Mailing Address: 318 S US Highway 1, Suite 200, Jupiter, FL 33477	
Agent/Contact Person: Connor Kennedy, EDC	Phone Number / Email Address: (772)-462-2455 connorkennedy@edc-inc.com
Agent's Mailing Address: 10250 SW Village Parkway, Suite 201, Port St. Lucie, FL 34987	
Architect:	Engineer:
Planner: Same as Agent	Landscape Architect: Jeffrey W. Smith

Statement of Ownership and Designation of Authorized Agent

(Please Print or Type)

Before me, the undersigned authority, personally appeared _____

Who, being by me first duly sworn, on oath deposed and says:

1. That he/she is the fee simple title owner of the property described in the attached Legal Description.
2. That he/she is requesting approval of a _____ in the City of Stuart, FL.
3. That he/she has appointed _____ to act as an authorized agent on his/her behalf to accomplish the above project.

**Please See Attached Agent
Consent Forms**

Signature of Owner: _____

By: Name/Title _____

Street Address _____

City, State, Zip Code _____

P.O. Box _____

City, State, Zip Code _____

Telephone Number _____

Fax Number _____

Email Address: _____

STATE OF FLORIDA, COUNTY OF _____

Sworn and subscribed before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, _____ By _____.

Personally Known OR Produced Identification
Type of Identification Produced: _____

Notary Public

My Commission expires:

Financial Responsibility Form

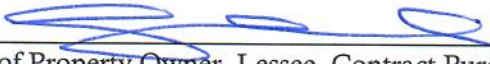
(Please Print or Type)

The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name: <u>Jason Aekner</u>	City/State/Zip Code: <u>Jupiter, FL 33477</u>
Title: <u>CEO</u>	Telephone Number: <u>561-845-4478</u>
Company: <u>Perseverance Recovery Center, LLC</u>	Facsimile Number:
Company Address: <u>318 S. US Highway 1 Ste. 200</u>	Email Address (optional): <u>Jason.Aekner@Phoenix-BHCC.com</u>

I hereby certify that all information contained herein is true and correct.

1. Signed this 7th day of February, 2024



Signature of Property Owner, Lessee, Contract Purchaser or Applicant (circle one)

Application Requirements

Fee: \$1,864.00 (*this does not include fees that may be charged as a result of application review by the City's consultants or any required recording fees*)

➤ **Submittal Requirements:** A completed application form, the payment of fees, one (1) copy of all documents on a PDF formatted disc electronically signed and sealed, and a justification for the proposed change and any other information required by the City Development Director.

Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application. The Local Planning Agency (LPA) is required to hold an advertised public hearing and formulate a recommendation to the City Commission. The City Commission is also required to hold an advertised public hearing after which it may approve, approve with conditions, or deny the application.

Justification: Please explain the need and justification of the change and the relationship of the proposed change to the goals, objectives and policies of the City of Stuart Comprehensive Plan and Land Development Code (*include additional pages if needed*).

Please find justification included in accompanying Project Narrative.

(over)

PROJECT NARRATIVE & COVER LETTER

500 SE Indian St.

Small Scale Comprehensive Plan Amendment Request

February 6, 2024

REQUEST

On behalf of the Petitioner, Engineering Design & Construction, Inc. is requesting approval of a Small-Scale Comprehensive Plan Amendment application for properties located at 500 SE Indian Street in Stuart, Florida. The applicant is seeking approval to amend the sites future land use designation from Multi-Family Residential to Commercial to allow for an inpatient primary mental health and residential drug and alcohol rehabilitation facility with medical detox.

SITE CHARACTERISTICS & PROJECT HISTORY

The subject properties are located on the southside of SE Indian St approximately 540 feet east of Kanner Highway in Stuart Florida. They can be identified in the below table:

Parcel ID:	Address:	Acreage:	Future Land Use	Zoning
40-38-41-010-000-00010-0	500 SE Indian St	4.67	Multi-Family Residential	RPUD
40-38-41-010-000-00001-0	N/A	4.79	Multi-Family Residential	RPUD
Total Acres:		9.46		

The project currently has a Future Land Use designation of Multi-Family Residential and a Zoning designation of RPUD: Residential PUD.

Under the direction of the city following a Pre-Application Meeting on January 25, 2024, both a Rezoning Application and Small-Scale Comprehensive Plan Amendment are being submitted to the City of Stuart. The Rezone application requests a change in the sites zoning designation from Residential PUD (RPUD) to Mixed-Use PUD (MXPUD). The Small-Scale Comprehensive Future Land Use Map Amendment is requesting a change in Future Land Use from Multi-Family Residential (MF/RES) to Commercial (COMM). These zoning and land use designations align with where these inpatient rehabilitation facilities have previously been approved within the City of Stuart. These applications are being submitted concurrently.

On September 26, 2005, the City Commission approved a rezone petition, via Ordinance No. 2042-05, and established the Villagio Residential Planned Unit Development (RPUD), to allow for the construction of 66-unit multi-family development. On January 9, 2017, the City Commission granted an amendment to the RPUD, via Ordinance No. 2340-2017 establishing the Clarity Pointe RPUD consisting of an 84-bed Assisted Living Facility (ALF) with Memory Care. Additionally, this approval also amended the zoning and land use designations for a 1.92-acre portion of the Clarity Pointe PUD from Residential PUD (RPUD) to Commercial Planned Unit Development (CPUD), and from Multi-Family Residential (MF/RES) to Commercial (COMM). The 1.92 Acre property is **NOT** a part of this application.

As previously stated, it is the intention of the applicant to convert the former 84 bed assisted living facility into an inpatient mental health, drug and alcohol rehabilitation facility with medical detox. No new improvements are being proposed for this site. A Commercial Future Land Use

Designation would align with the Land Use where these inpatient rehabilitation facilities have been previously approved within the City of Stuart. One such instance was the approval of Dream Center for Recovery located within the Parks Indian PUD. This site has a Zoning Designation of Mixed-Use PUD (MXPUD) and a Future Land Use of Commercial.

To the north of the subject property lies the right of way of SE Indian street followed by The Crossings multifamily residential development. This parcel has a Future Land Use designation of Multi-Family Residential and lies in the Residential PUD (RPUD) Zoning District.

To the west of the subject property lies a drainage tract approximately 5 acres in size. This lot has a Future Land Use designation of Commercial (COMM) and lies in the Commercial PUD (CPUD) Zoning District.

South of the subject property lies heavily wooded undeveloped land located in the Martin County Jurisdiction. This parcel has a Future Land Use designation of Low Density-up to 5 UPA and lies in the PUD-R (Residential) Zoning District.

To the east of the subject property lies the Palmetto Edge commercial plaza. This parcel has a Future Land Use designation of Commercial (COMM) and lies in the Commercial PUD (CPUD) Zoning District.

Relationship of Change to Goals, Objectives and Policies of Comprehensive Plan and LDC

These parcels are being rezoned from Residential PUD (RPUD) to Mixed-Use PUD (MXPUD) as this zoning designation best aligns with where these uses have historically been located. As stated in Policy 1.A7.1. of Stuart's Comprehensive Plan, Commercial Land Use are "land uses and activities predominantly connected with the sale, rental, and distribution of products or performance of professional and non-professional services. Includes retail sales, service establishments, business, professional and other offices, shopping centers, financial institutions, restaurants, entertainment, hotels, motels, and other temporary lodging. A limited amount of Multi-Family Residential and indoor industrial uses are allowed. **Mixed-Use Projects are allowed.** Also, public facilities and electronic distribution substations are allowed."

Based on the above justification and attached information, the Petitioner respectfully requests approval of this request.

Z:\EDC-2023\23-378 - Ackner - 500 SE Indian Street\ENGINEERING\Documents\Submittal Documents\Justification Statement\2024-02-06_Ackner - 500 SE Indian Comp Plan Narrative.docx

Connor Kennedy
Planner I Planning Division
Engineering Design & Construction, Inc.
10250 SW Village Parkway - Suite 201
Port Saint Lucie, Florida 34987

Re: Ackner - 500 SE Indian St (Stuart)
TRAFFIC STATEMENT
Parcel ID: 40-38-41-010-000-00010-0

Dear Connor,

JFO Group Inc. has been retained to prepare a traffic impact analysis to determine compliance with Sec. 4.05. of the City of Stuart Land Development Code. This traffic statement is associated with a Rezoning and a Future Land Use amendment application to convert an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility.

The site is located south of Indian Street, $\pm$ 0.15 miles northeast of Kanner Highway in the City of Stuart, Florida. Figure 1 shows the project location in relation to the transportation network. Parcel ID associated with this project is 40-38-41-010-000-00010-0. A copy of the property appraiser information for the site is included as Exhibit 1.

Exhibit 2 includes a copy of the latest approved site plan. Exhibit 3 includes a copy of Ordinance 2340-2017 which approved the 84-bed assisted living facility as it is built today.



Figure 1 : Project Location

Project trip generation rates were based on the *Institute of Transportation Engineering (ITE) Trip Generation Manual 11th Edition*. When fitted curve equations were not available, weighted average rates were used. Similarly, when data plots had at least 20 data points and a fitted curve equation with an R² of at least 0.75, fitted curve equations were used. Table 1 shows the rates used in order to determine the trip generation for Daily, AM, and PM peak hour conditions while Table 2 summarizes the net Daily, AM, and PM peak trips potentially generated by the existing and proposed development. Exhibit 4 includes excerpts from the ITE trip generation manual for ITE Land Use Code 254.

Table 1: Trip Generation Rates

Land Use	ITE Code	Daily Trip Gen.	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Assisted Living	254	2.60	60%	40%	0.18	39%	61%	0.24

According to Table 2, the net Daily, AM and PM peak trips potentially generated due to the proposed changes are 146, 10 (6 In/4 Out) and 14 (5 In/9 Out) trips respectively. Therefore, according to Table 2, the proposed changes to the 500 SE Indian St property will generate less than 20 peak hour trips.

There are 70 bedrooms at the existing facility that currently accommodates 84 beds. Given the proposed use on the subject site, a maximum of two (2) beds could be accomodated per bedroom. Therefore, in order to prepare a conservative analysis, it was assumed that a maximum of 140 beds could be operating on the subject site. Similarly, since ITE does not include trip generation rates for mental/drug rehab facilities and as part of a conservative analysis, it was assumed that for trip generation purposes the proposed facility will operate similarly to an assisted living facility.

Table 2: Trip Generation

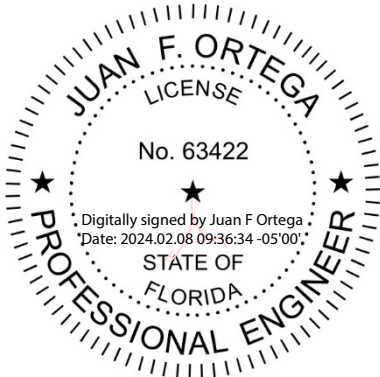
Land Use	Intensity	Daily Traffic	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
EXISTING DEVELOPMENT								
Assisted Living	84 Beds	218	9	6	15	8	12	20
Net Existing Traffic		218	9	6	15	8	12	20
PROPOSED DEVELOPMENT								
Mental/Drug Rehab	140 Beds	364	15	10	25	13	21	34
Net Proposed Traffic		364	15	10	25	13	21	34
Net Traffic		146	6	4	10	5	9	14

The proposed changes to the 500 SE Indian St property have been evaluated following Sec. 4.05. of the City of Stuart Land Development Code. This analysis shows that the proposed request to convert an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility will generate less than 20 peak hour trips. Therefore, the proposed project does not require a traffic study where a maximum of 146 daily trips could be potentially generated.

This analysis shows that the proposed Future Land Use and Zoning changes necessary to allow interior renovations to the 500 SE Indian St property to accommodate the proposed inpatient mental health and drug rehab facility will be in compliance with Sec. 4.05. of the City of Stuart Land Development Code. Project build-out is expected in 2025.

Sincerely,

JFO GROUP INC
COA Number 32276



- Enclosures:
- Exhibit 1: Property Appraiser Information

Exhibit 2: Approved Site Plan

Exhibit 3: Ordinance 2340-2017

Exhibit 4: ITE Trip Generation Rates

This item has been electronically signed and sealed by Dr. Juan F. Ortega, PE on February 8, 2024 using a Digital Signature. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.



Basic Info

PIN 40-38-41-010-000-00010-0	AIN 1118645	Situs Address 500 SE INDIAN ST STUART FL	Website Updated 1/25/24
--	-----------------------	--	-----------------------------------

General Information

CHANGE MAILING ADDRESS

SIGN UP FOR PROPERTY FRAUD ALERT

Property Owners

CP STUART DEVELOPMENT I
LLC

Parcel ID

40-38-41-010-000-00010-0

Use Code/Property Class

7400 - 7400 Homes for the
aged

Mailing Address

4300 LEGENDARY DR #234
DESTIN FL 32541

Account Number

1118645

Neighborhood

M3 M3-CENTRAL STUART

Tax District

STUART

Property Address

500 SE INDIAN ST STUART FL

Legal Acres

4.67

Legal Description

LOT 1 CLARITY POINTE ACCORDING TO THE
PL...

Ag Use Size (Acre\Sq Ft)

N/A

Current Value

Year	Land Value	Improvement Value	Market Value	Value Not Taxed	Assessed Value	Total County Exemptions	County Taxable Value
2023	\$ 1,258,190	\$ 10,490,110	\$ 11,748,300	\$ 0	\$ 11,748,300	\$ 0	\$ 11,748,300

Market values shown on the website reflect market conditions as of January 1st, the statutory assessment date. We are prohibited by law from relying on sales that occur after the January 1 assessment date. Therefore, market values shown on the website do not reflect today's market conditions, but rather the market conditions last year. In addition, the statutes require the county Property Appraiser to deduct for typical costs of sale (which include expenses such as commissions, title insurance, appraisals, inspection fees, etc.) when arriving at market value for tax purposes. That is why the market value for tax purposes is different from what a property would sell for today.

Current Sale

Sale Date N/A	Grantor (Seller) N/A	Doc Num N/A
Sale Price N/A	Deed Type N/A	Book & Page N/A

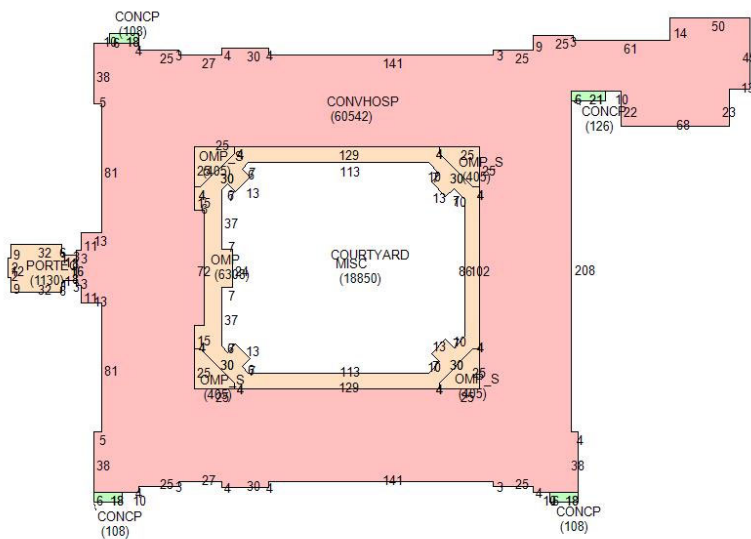
Improvements

PIN	AIN	Situs Address	Website Updated
40-38-41-010-000-00010-0	1118645	500 SE INDIAN ST STUART FL	1/25/24

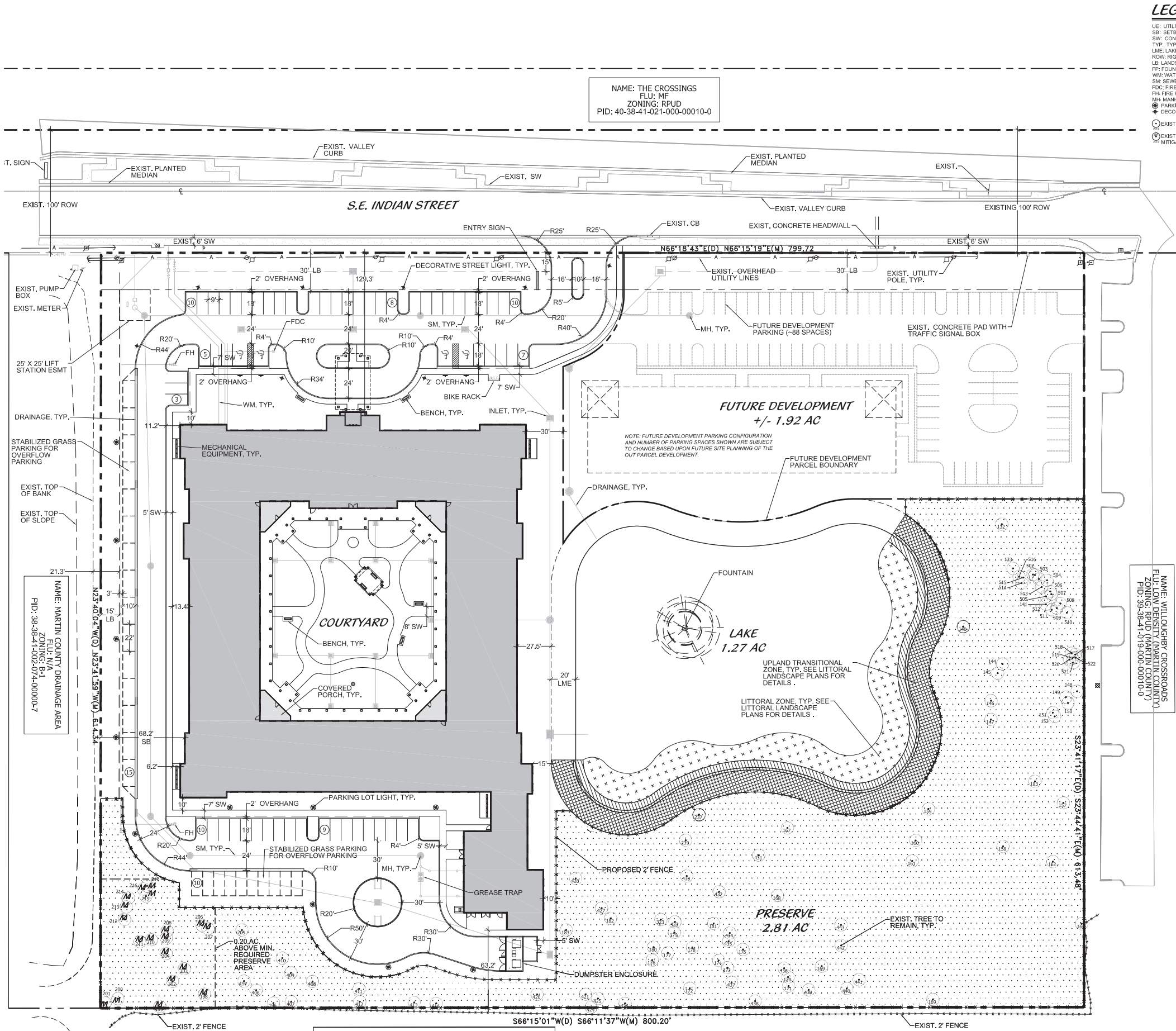
Use Code/Property Class	Total Finished Area	Max Stories
7400 - 7400 Homes for the aged	60,542 SF	1

Building Information (1 of 1)

Building Type	Finished Area	Exterior Cover	Roof Cover
Convalescent Hospital	60,542 SF	Stud -Hardboard Siding	Com Shingle
Year Built	Wall	Number of Units	Wall Height
2018	Class C - Fire Resistant	100	10
Bedrooms	Full Baths	Half Baths	
N/A	64	20	



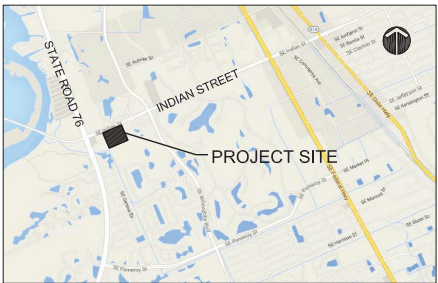
Report a
Discrepancy



LEGEND

- UE: UTILITY EASEMENT
- SB: SETBACK
- SW: CONCRETE SIDEWALK
- TYP: TYPICAL
- LME: LAKE MAINTENANCE EASEMENT
- ROW: RIGHT-OF-WAY
- LB: LANDSCAPE BUFFER
- FP: FOUNDATION PLANTING AREA
- WM: WATER MAIN
- SM: SEWER MAIN
- FDC: FIRE DEPARTMENT CONNECTION
- FH: FIRE HYDRANT
- MH: MANHOLE
- P: PARKING LOT LIGHT
- D: DECORATIVE STREET LIGHT
- : EXISTING TREE TO REMAIN
- ⊙: EXISTING TREE TO COUNT FOR MITIGATION CREDITS

LOCATION MAP



SITE DATA

SECTION 6, TOWNSHIP 48, RANGE 42	CLARITY POINTE- STUART		
NAME OF PROJECT	48-42-0601-0432		
PROPERTY CONTROL NUMBERS	OFFICE PARK (OP)		
CURRENT FUTURE LAND USE	RESIDENTIAL PUD (RPUD)		
CURRENT ZONING			
TOTAL SITE AREA	11.27	AC	490,921 SF
NET SITE AREA	8.46	AC	368,517 SF
STORMWATER (15% NET SITE)	1.27	AC	55,331 SF
MEMORY CARE FACILITY	5.27	AC	229,536 SF
FUTURE DEVELOPMENT	1.92	AC	83,650 SF
BUILDING DATA			
CLARITY POINTE FACILITY	96,713	SF	84 BEDS
CONDITIONED FLOOR SPACE	60,217	SF	
INTERIOR COURTYARD	36,496	SF	
BUILDING LOT COVERAGE	PERMITTED	PROVIDED	
(EXCLUDING FUTURE DEVELOPMENT PARCEL)			
CLARITY POINTE FACILITY	35%	26.24%	
PRESERVE AREA	REQUIRED (AC)	PROVIDED (AC)	
(MIN. 25% OF NATIVE HABITAT)	2.61	2.81	
SETBACK DATA	REQUIRED	PROVIDED	
FRONT SETBACK (JOHNSON ROAD)	75	129.30'	
SIDE (EAST)	30	30'	
SIDE (WEST)	30	68.20'	
REAR (SOUTH)	50	63.20'	
SURFACE COVER			
(EXCLUDING FUTURE DEVELOPMENT PARCEL)			
IMPERVIOUS AREA	SF	AC	%
BUILDING LOT COVERAGE	96,713	2.22	26.24%
VEHICULAR USE AREA	49,413	1.13	13.41%
SIDEWALK & PLAZA	7,509	0.17	2.04%
TOTAL IMPERVIOUS	153,635	3.53	41.69%
PERVIOUS AREA			
OPEN SPACE	43,652	1.00	11.85%
PRESERVE AREA	122,403	2.81	33.21%
LANDSCAPE BUFFERS	30,210	0.69	8.20%
COURTYARD	18,617	0.43	5.05%
TOTAL PERVIOUS	214,882	4.51	58.31%
TOTAL	368,517	8.03	100.00%
PARKING DATA	REQUIRED	PROVIDED	
EMPLOYEE & GUEST PARKING	61	62	
PAVED		62	
GRASS		25	
HANDICAP SPACES (INCLUDED IN TOTAL)	3	4	
TOTAL	61	87	

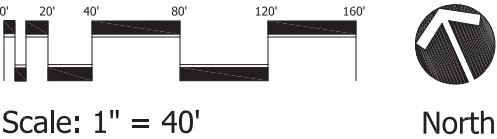
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOTS 14 AND 15, LYING SOUTH OF INDIAN STREET AND LOTS 18 AND 19 AND A PORTION OF THE FORMER 60 FEET WIDE ROAD RIGHT-OF-WAY THROUGH AFORESAID LOTS ACCORDING TO THE PLAT OF STUART FARMS, AS RECORDED IN PLAT BOOK 1, PAGE 63, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE POINT OF INTERSECTION OF THE CENTERLINE OF STATE ROAD 76 AND THE CENTERLINE OF INDIAN STREET; THENCE NORTH 66°18'43" EAST, ALONG SAID CENTERLINE OF INDIAN STREET, A DISTANCE OF 47.42 FEET; THENCE SOUTH 23°41'17" EAST, A DISTANCE OF 50.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF INDIAN STREET; THENCE NORTH 66°18'43" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 602.34 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 66°18'43" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 799.73 FEET; THENCE SOUTH 23°41'17" EAST DEPARTING SAID SOUTH RIGHT-OF-WAY, A DISTANCE OF 813.48 FEET; THENCE SOUTH 66°15'01" WEST, A DISTANCE OF 799.95 FEET; THENCE NORTH 23°40'04" WEST, A DISTANCE OF 614.34 FEET TO THE POINT OF BEGINNING.

CONTAINING 11.27 ACRES, MORE OR LESS.

SITE PLAN



Cotleur & Hearing

Landscape Architects
Land Planners
Environmental Consultants
1934 Commerce Lane
Suite 1
Jupiter, Florida 33458
561.747.6336 • Fax 747.1377
www.cotleurhearing.com
Lic# LC-C000239

CLARITY POINTE
Stuart, Florida

DESIGNED _____ DMS
DRAWN _____ MCR
APPROVED _____ DEH
JOB NUMBER 15-0206.07
DATE 08-28-16
REVISIONS 10-25-16

October 25, 2016 8:25:58 a.m.
Drawing: 150206.07 SP.DWG

SHEET 1 OF 2

© COTLEUR & HEARING, INC.
These drawings are the property of the architect and are not to be used for reproduction or other projects except by agreement in writing with the architect. Immediately report any discrepancies to the architect.

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**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2340-2017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE RPUD KNOWN AS "VILLAGIO STUART", CONSISTING OF 11.27 ACRES, OWNED BY TREASURE COAST PROPERTIES, LLC, AND APPLIED FOR BY CP-STUART DEVELOPMENT LLC, LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET APPROXIMATELY 580 FEET EAST OF THE INTERSECTION OF SE KANNER HIGHWAY AND SE INDIAN STREET, SAID PROPERTY BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; FURTHER REPEALING ORDINANCE NUMBER 2042-05, AND ESTABLISHING THE CLARITY POINTE RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) CONSISTING OF AN 84 BED ASSISTED LIVING FACILITY WITH MEMORY CARE; AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN, THEREBY CHANGING THE FUTURE LAND USE DESIGNATION FROM "MULTI-FAMILY RESIDENTIAL" TO "COMMERCIAL" FOR A 1.92 ACRE PORTION OF SAID PROPERTY; PROVIDING THAT SAID PROPERTY SHALL CONCURRENTLY REZONED FROM "RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD)" TO "COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD)" ON THE CITY'S OFFICIAL ZONING MAP; APPROVING A MASTER DEVELOPMENT PLAN FOR THE OVERALL CLARITY POINTE PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR DEVELOPMENT CONDITIONS; A TIMETABLE FOR DEVELOPMENT, DECLARING THE PLAN TO BE CONSISTENT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

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Land Use: 254

Assisted Living

Description

An assisted living complex is a residential setting that provides either routine general protective oversight or assistance with activities necessary for independent living to persons with mental or physical limitations. The typical resident has difficulty managing in an independent living arrangement but does not require nursing home care. Its centralized services typically include dining, housekeeping, social and physical activities, medication administration, and communal transportation.

The complex commonly provides separate living quarters for each resident. Alzheimer's and ALS care are commonly offered at an assisted living facility. Living quarters for these patients may be located separately from the other residents.

Assisted care commonly bridges the gap between independent living and a nursing home. In some areas of the country, an assisted living residence may be called personal care, residential care, or domiciliary care. Staff may be available at an assisted care facility 24 hours a day, but skilled medical care—which is limited in nature—is not required. Congregate care facility (Land Use 253), continuing care retirement community (Land Use 255), and nursing home (Land Use 620) are related uses.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (<https://www.ite.org/technical-resources/topics/trip-and-parking-generation/>).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Connecticut, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, and Utah.

Source Numbers

244, 573, 581, 611, 725, 876, 877, 912, 1016, 1029

Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 2

Avg. Num. of Beds: 135

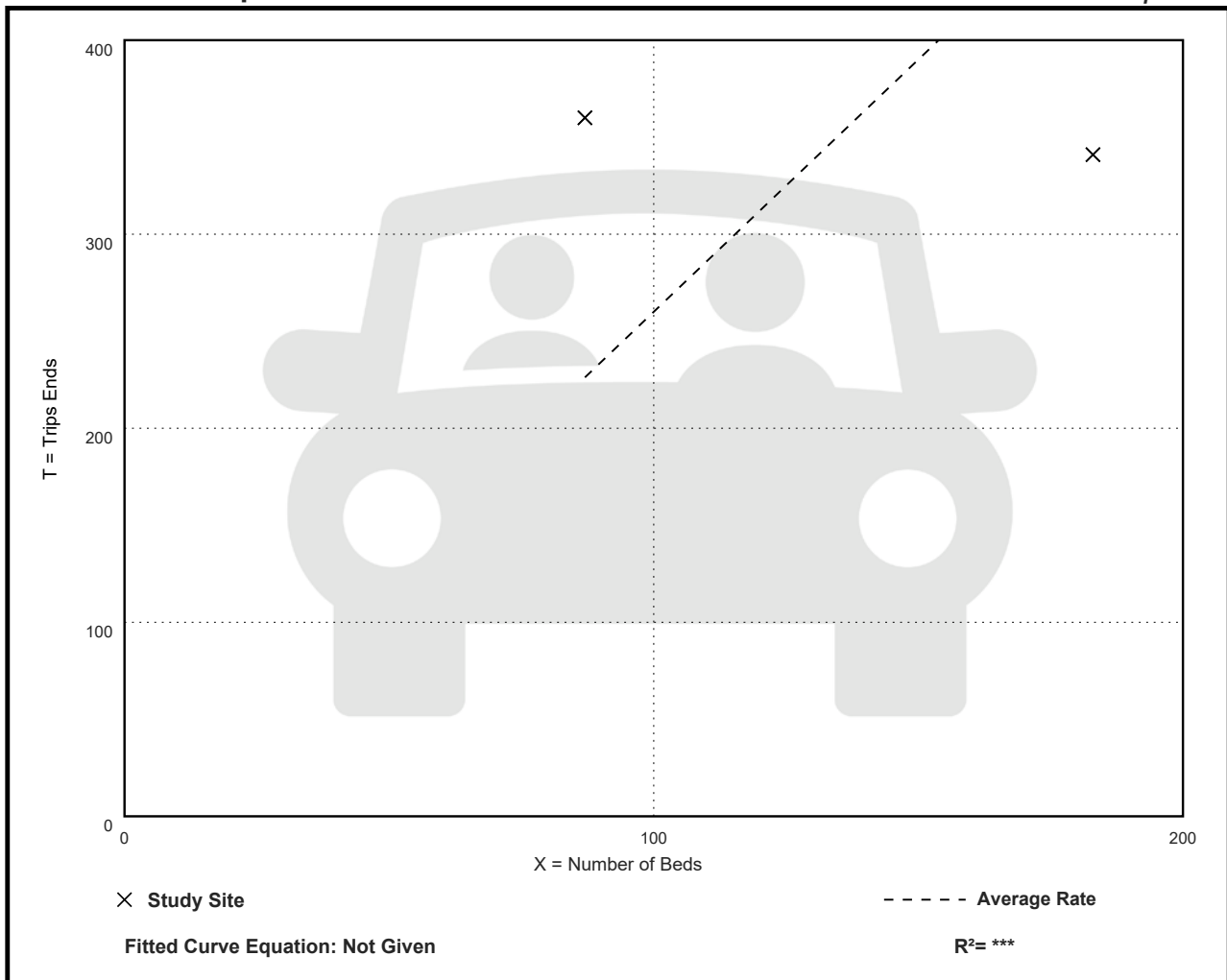
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
2.60	1.86 - 4.14	***

Data Plot and Equation

Caution – Small Sample Size



Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 14

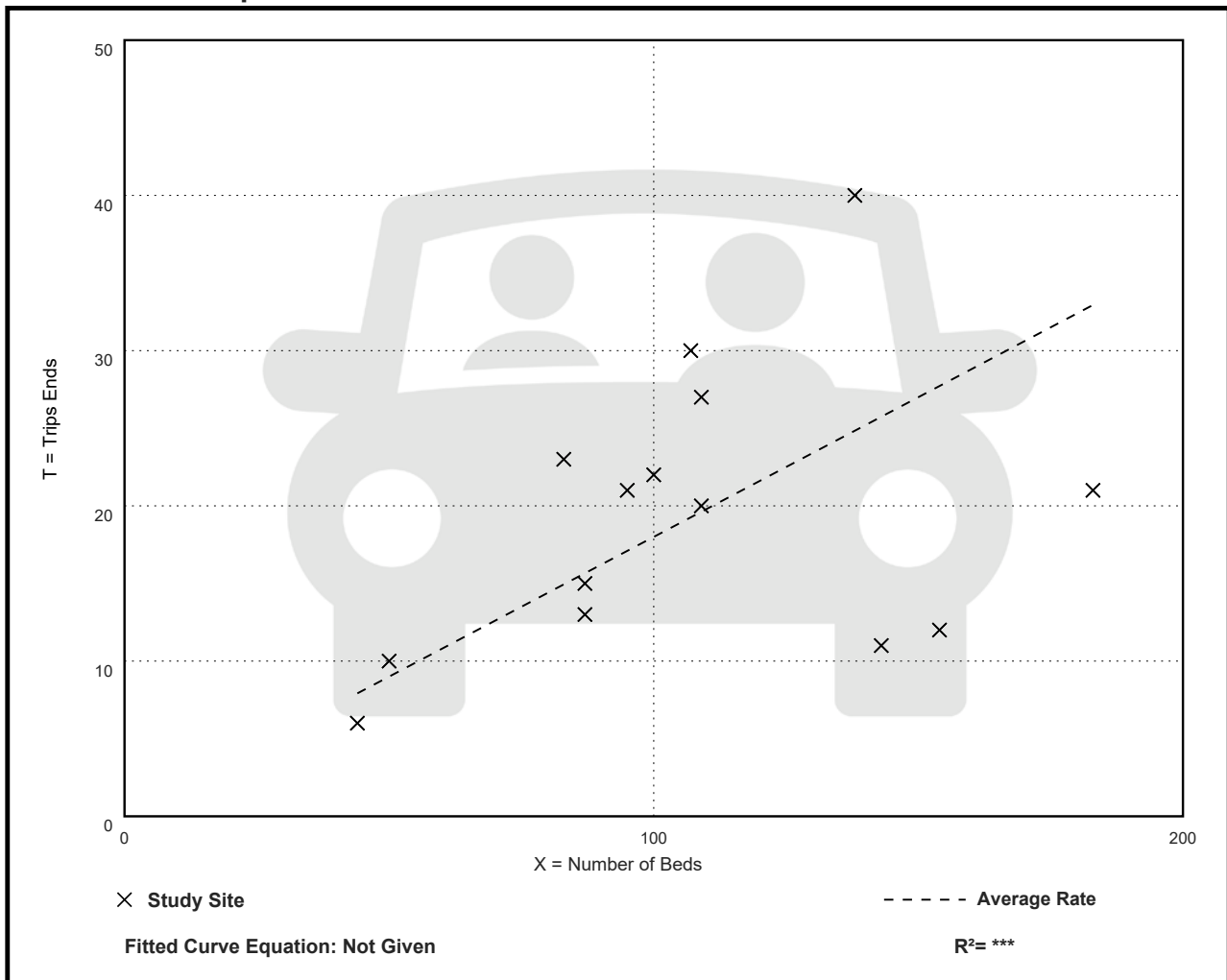
Avg. Num. of Beds: 106

Directional Distribution: 60% entering, 40% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
0.18	0.08 - 0.29	0.08

Data Plot and Equation



Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 14

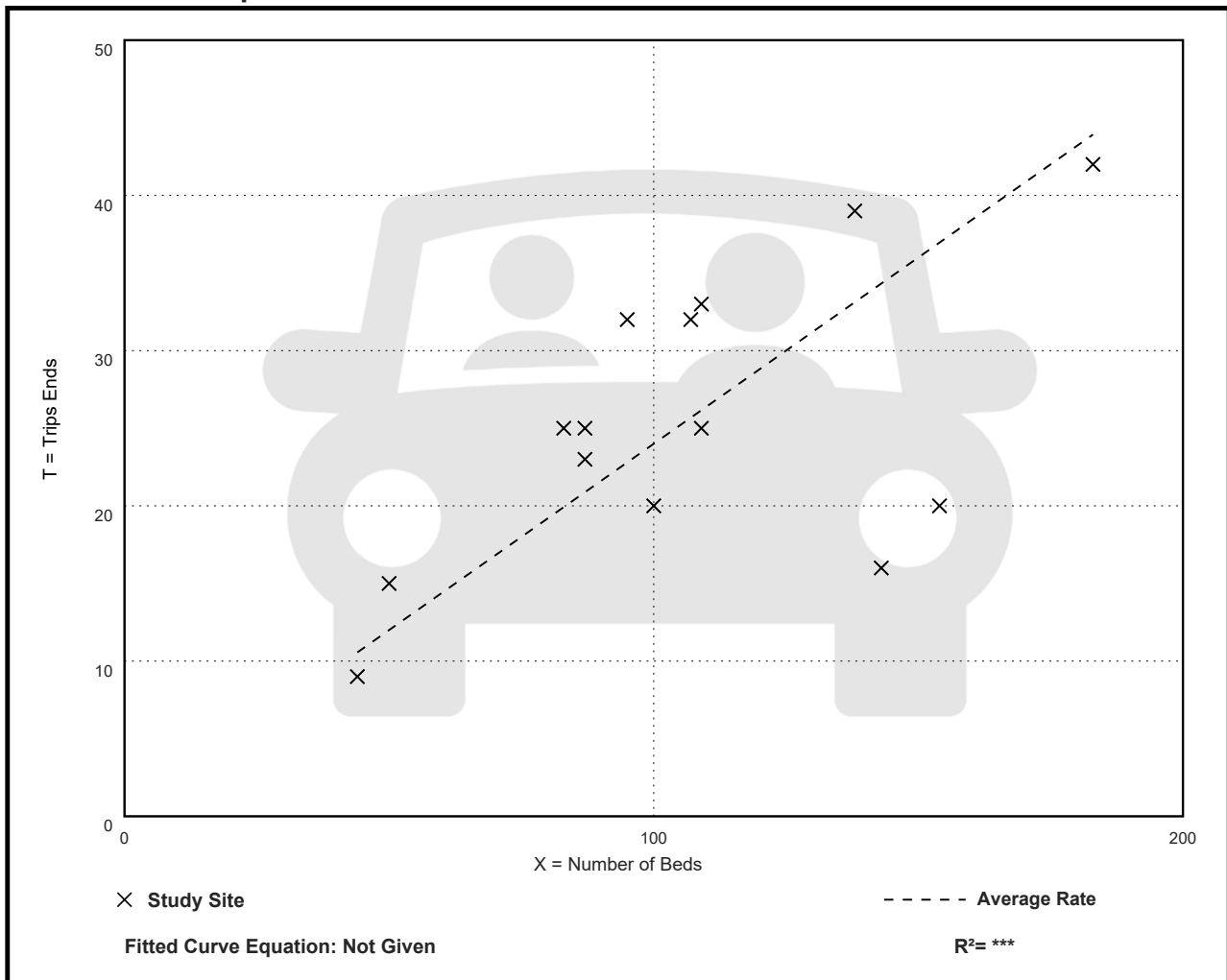
Avg. Num. of Beds: 106

Directional Distribution: 39% entering, 61% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
0.24	0.11 - 0.34	0.07

Data Plot and Equation





To: Jodi Nentwick-Kugler
Director of Development
City of Stuart Development Department

From: Alex Memering, P.E.
Kimley-Horn and Associates, Inc.

ARM

Alex Campano, E.I.
Kimley-Horn and Associates, Inc.

ADC

Date: March 27, 2024

Re: **Clarity Pointe**
Final Review of Traffic Impact Analysis

Kimley-Horn has reviewed the Traffic Statement (dated February 8, 2024) prepared by JFO GROUP INC. related to the above-mentioned project. The subject project is generally located south of SE Indian Street, west of S Kanner Highway in the City of Stuart, Florida.

The traffic statement evaluated the trip generation of the existing site relative to the proposed use. The existing site currently operates as an assisted living facility, which is consistent with the previously approved traffic study. A mental health / rehab facility is proposed, which is similar to the existing use, with a maximum increase from the existing 86 beds to 140 beds.

The proposed increase to a maximum of 140 beds has the potential to generate a net increase of 146 daily, 10 (6 entering, 4 exiting) AM peak hour, and 14 (5 entering, 9 exiting) PM peak hour trips. Based on the net change in peak hour trips (< 20) a traffic study isn't required per the City of Stuart Land Development Code Section 4.04.05.

It should be noted that the change in Future Land Use (FLU) and zoning designations do not increase traffic volumes as the proposed FLU and zoning designations provide the same intensities as the existing FLU and zoning designations per the City of Stuart Comprehensive Plan and Land Development Code. We have no further comments at this time.

Thank you for the opportunity to assist the City of Stuart in reviewing the noted project. Please contact us if you have any questions or need additional information.



LEGAL DESCRIPTION: (PER NEXGEN)

PARCEL 1: LOT 1 CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA (RPUD TRACT) PARCEL 2: COMMON AREA - UPLAND PRESERVE TRACT, LAKE TRACT, ACCESS TRACT - CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA

CERTIFIED TO:

JASON ACKNER

FLOOD ZONE:

12085C0161H
ZONE: X
EFF: 02/19/2020

GENERAL NOTES:

- 1) THIS SURVEY IS BASED UPON RECORD INFORMATION BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
- 2) IF THIS SURVEY HAS BEEN PREPARED FOR THE PURPOSES OF A MORTGAGE TRANSACTION, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES. NO FUTURE CONSTRUCTION SHALL BE BASED UPON THIS SURVEY WITHOUT FIRST OBTAINING APPROVAL AND/OR UPDATES FROM NEXGEN SURVEYING, LLC. NEXGEN SURVEYING, LLC, ASSUMES NO RESPONSIBILITY FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
- 3) ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
- 4) GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS. 5) UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
- 6) ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988).
- 7) ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
- 8) CORNERS SHOWN AS "SET" ARE 5/8" IRON RODS IDENTIFIED WITH A PLASTIC CAP MARKED LS (LICENSED SURVEYOR)

Curve Table			
Curve #	Length	Radius	Delta
C1	66.18'	56.67'	66° 54' 39"
C2	31.20'	78.40'	22° 47' 53"

Line Table		
Line #	Length	Direction
L1	34.00'	N23° 44' 40"W
L2	16.34'	S43° 10' 02"W

LEGEND:

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING)

A/C-AIR CONDITIONER P.O.B.-POINT OF BEGINNING D.E.-DRAINAGE EASEMENT R-RADIUS(R)
WM-WATER METER P.O.C.-POINT OF COMMENCEMENT P.U.E.- PUBLIC UTILITY EASEMENT O.R.B.-OFFICIAL RECORDS BOOK
AL- ARC LENGTH P.B.-PLAT BOOK L.A.E.-LIMITED ACCESS EASEMENT SQ.FT.-SQUARE FEET
(C)-CALCULATED PG-PAGE L.M.E.-LAKE MAINTENANCE EASEMENT AC.-ACRES
(M)-MEASURED U.E.-UTILITY EASEMENT O.H.E.-OVERHEAD EASEMENT DB-DEED BOOK(D)-DEED

ELEV-ELEVATION ⚡ -LIGHT POLE # -NUMBER ⚡ -WELL ⚡ -FENCE
FF-FINISHED FLOOR -ASPHALT -WATER VALVE ± -PLUS OR MINUS
LS-LICENSED SURVEYOR -CONCRETE -CENTER LINE ⚡ -POLE
LB-LICENSED BUSINESS -PAVER/BRICK -CATCH BASIN ⚡ -MANHOLE
PSM-PROFESSIONAL SURVEYOR & MAPPER -WOOD -FIRE HYDRANT ⚡ -TOPOGRAPHIC ELEVATION

SURVEY NOTES:

- NO NOTABLE CONDITIONS FOUND

FIELD DATE: 2-9-2024

DRAWN BY: KG

ORDER NO:233671

REVISIONS:

1547 PROSPERITY FARMS ROAD
WEST PALM BEACH, FL 33403
NexgenSurveying.com LB#8111
PHONE: 561.508.6272
FAX: 561.508.6309



BOUNDARY SURVEY
500 SE INDIAN ST, STUART, FL 34997

I HEREBY CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PER CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

THE SEAL APPEARING
ON THIS DOCUMENT
WAS AUTHORIZED BY
CLYDE O. MCNEAL
PSM 2883
ON 2/13/2024

**MINUTES
LOCAL PLANNING AGENCY OF THE CITY OF STUART
MARCH 14, 2024
AT 5:30 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994**

LOCAL PLANNING AGENCY

**Chair - Kelly Laurine
Vice Chair - Sean Forbes
Board Member - Margaret Bromfield
Board Member - William Mathers
Board Member - Deana Peterson
Board Member - Ryan Strom
Board Member - VACANT
Ex Officio Board Member - Mark Sechrist**

ADMINISTRATIVE

**Development Director - Jodi Nentwick-Kugler
Board Secretary - Susej T. Meleqi**

CALL TO ORDER

5:30 PM

ROLL CALL

PRESENT: Vice Chair Forbes, Board Member Bromfield, Board Member Peterson, Board Member Strom

ABSENT: Chair Laurine, Board Member Mathers

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

5:32 PM MOTION: Approve.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

Motion approved unanimously.

Michael Mortell, City Manager swore in Deana Peterson. Board Member Peterson took her Oath for the LPA Board.

APPROVAL OF MINUTES

1. APPROVAL OF 02/08/2024 LPA MINUTES

5:34 PM MOTION: Approve.

MOVED BY: Ryan Strom

SECONDED BY: Margaret Bromfield

Motion approved unanimously.

COMMENTS FROM THE PUBLIC (Non-Agenda Related) (3 Minutes Max.)

None.

COMMENTS BY BOARD MEMBERS (Non-Agenda Items)

Vice Chair Forbes

- Spoke on the growth in the City and what growth truly means.

ACTION ITEMS

2. **APPLICANT REQUESTED CONTINUANCE TO A DATE CERTAIN OF APRIL 11, 2024 - THIS MATTER WILL NOT BE HEARD BY THE BOARD ON MARCH 14, 2024**

EDEN / MAR-STUART CPUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT GENERALLY LOCATED AT 3970 SE FEDERAL HIGHWAY (LEGISLATIVE):

ORDINANCE No. 2527-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, FOR A SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT AS DEFINED IN F.S. §163.3187; AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 22.76-ACRE PARCEL FROM COMMERCIAL TO THE NEIGHBORHOOD SPECIAL DISTRICT FUTURE LAND USE DESIGNATION, FOR A MAXIMUM RESIDENTIAL DENSITY OF 7.64 DWELLING UNITS PER ACRE; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

5:40 PM MOTION: Approval to continue the item.

MOVED BY: Ryan Strom

SECONDED BY: Deana Peterson

Motion approved unanimously.

3. **APPLICANT REQUESTED CONTINUANCE TO A DATE CERTAIN OF APRIL 11, 2024 - THIS MATTER WILL NOT BE HEARD BY THE BOARD ON MARCH 14, 2024**

EDEN / MAR-STUART CPUD - MAJOR COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) AMENDMENT GENERALLY LOCATED AT 3970 SE

FEDERAL HIGHWAY (QJ):

ORDINANCE No. 2528-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, FOR A MAJOR CPUD AMENDMENT TO THE 12.31-ACRE MAR-STUART (MARKET PLACE) COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) LOCATED ON THE WEST SIDE OF SE FEDERAL HIGHWAY, TO INCORPORATE A 22.76-ACRE PARCEL WITHIN THE OVERALL MAR-STUART CPUD FOR A TOTAL LAND AREA OF 35.07-ACRES; AND ALLOWING FOR A FIVE (5) PHASE DEVELOPMENT FOR THREE (3) ADDITIONAL AUTOMOBILE DEALERSHIPS, ONE (1) DEALERSHIP CARWASH, A TWO-STORY PARKING DECK, TWO (2) 8,800 SQUARE FOOT ONE-STORY COMMERCIAL BUILDINGS, A 2,500 SQUARE FOOT ONE-STORY RESTAURANT/DRIVE THROUGH, AND THREE (3) FOUR-STORY BUILDINGS TO ACCOMMODATE 268-UNIT MULTI-FAMILY UNITS, FOR A MAXIMUM RESIDENTIAL DENSITY OF 7.64 DWELLING UNITS PER ACRE; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR A PHASED DEVELOPMENT SCHEDULE; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

5:40 PM MOTION: Approval to continue the item.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

Motion approved unanimously.

4. CLARITY POINTE PUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT LOCATED AT 500 SE INDIAN STREET (LEGISLATIVE)(RC):

ORDINANCE No. 2529-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REQUESTS FOR A SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT AS DEFINED IN F.S.§163.3187; AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCELS OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND OTHER PURPOSES

Jodi Nentwick Kugler, Development Director, presented the projects notice, location, site history, adjacent land use & zoning, existing future land use, proposed future land use, and maximum build out.

Board Members had several questions. City Manager, Michael Mortell responded.

Brad Curry, representative for the project, introduced himself and the applicant, Jason Ackner.

PUBLIC COMMENT:

1. Barbara Petitt - SE Willoughby Terrace; Had several questions regarding the project and expressed her concerns about the project.
2. Sean Reed - SW 6th St; Spoke on the land use code of the City vs the County.
3. Rosi Shepard - SW North Carolina; Spoke in favor of the land use change.
4. Christina Tucker - SE Indian St; Stated she was the owner of Coastal detox and expressed her concerns on the project.

5:52 PM MOTION: Approve.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

VOTE: MOTION PASSES 3/1.

YES: Margaret Bromfield, Sean Forbes, Ryan Strom

NO: Deana Peterson

5. CLARITY POINTE PUD - REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) ZONING DESIGNATION LOCATED AT 500 SE INDIAN STREET (QJ)(RC):

ORDINANCE No. 2530-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REQUESTING TO REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR APPROXIMATELY 9.46 ACRE PARCELS OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND OTHER PURPOSES.

Ms. Kugler presented the project's public notice, location, existing zoning district, mixed use planned unit development, zoning and future land use compatibility, 2016 approval site plan, wetland mitigation, and staff recommended approval to the City Commission.

Board Members asked staff questions about parking and traffic analysis.

Mr. Curry presented the project and responded to the Board Members questions and provided a brief background on the applicant.

Jason Ackner, Applicant, spoke on the project and what the facility would entail.

Board Members entered into questions and answer with the applicant.

PUBLIC COMMENT:

1. Ross Tucker - SE Indian St; Stated he believes that Mr. Ackner is doing his best but stated he believes the numbers provided are not accurate.
2. Christina Tucker - SE Indian St; Spoke on the amount of parking spaces and the number of beds within this facility.

Board Members and applicant continued discussion.

7:09 PM Vice Chair Forbes passed gavel to Board Member Strom

7:09 PM MOTION: Approve.
MOVED BY: Margaret Bromfield
SECONDED BY: Sean Forbes
VOTE: MOTION FAILED 2/2.
YES: Margaret Bromfield, Sean Forbes
NO: Deana Peterson, Ryan Strom

STAFF UPDATE

ADJOURNMENT

7:14 PM

Susej T. Meleqi, Board Secretary

Kelly Laurine, Chair

**Minutes to be approved at the LPA
Meeting this 9th day of May, 2024.**

CITY OF STUART, FLORIDA AGENDA ITEM REQUEST City Commission

Meeting Date: 5/28/2024

Prepared by: Jodi Nentwick

Title of Item:

CLARITY POINTE PUD - REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) ZONING DESIGNATION LOCATED AT 500 SE INDIAN STREET (QJ)(RC):

ORDINANCE No. 2530-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REZONING THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR AN APPROXIMATELY 9.46 ACRE PARCEL OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

Summary Explanation/Background Information on Agenda Request:

Connor Kennedy, from Engineering Design & Construction, Inc., applied on behalf of the Applicant, Jason Ackner, requesting rezoning a designated Residential Planned Unit Development (RPUD) to a Mixed-Use Planned Unit Development (MXPUD) zoning designation. This is regarding a proposal called Clarity Pointe PUD, which will cover 9.46 acres of the overall 11.27-acre master development. The site was developed under Ordinance Number 2340-2017, with the primary use of an 84-bed assisted living facility with memory care.

The Local Planning Agency held a public hearing for the rezoning petition on March 14, 2024, and voted to forward a recommendation of approval to the City Commission. The motion failed 2/2.

Funding Source:

N/A

Recommended Action:

The City Commission to consider a motion of approval for the adoption of Ordinance No. 2530-2024.

ATTACHMENTS:

1. Ordinance 2530-2024 - MXPUD (2)
2. CC Staff Report - MXPUD
3. Rezone Narrative
4. Rezone Application
5. Ackner Site Plan (Proposed)

6. Traffic Statement (2-9-2024)
7. Clarity Pointe Traffic Review_2024-03-27
8. Landscape Sufficiency Letter
9. Survey
10. Ordinance No. 2340-2017 (Clarity Pointe RPUD)
11. Draft LPA Minutes 3-14-2024



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2530-2024

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REZONING FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR APPROXIMATELY 9.46 ACRE PARCELS OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

*** * * * ***

WHEREAS, on December 11, 1989, the City of Stuart City Commission adopted Ordinance Number 1174-89, adopting a Comprehensive Growth Management Plan as mandated by the Local Government Comprehensive Planning and Land Development Regulation Act,

Ordinance No.: 2530-2025 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Rezone to Mixed-Use Planned Unit Development (MXPUD)

Chapter 163, Part II, Florida State Statutes, also known as the City of Stuart Comprehensive Plan, that designated the Future Land Use of this property as Industrial; and

WHEREAS, on December 20, 2004, the City of Stuart City Commission adopted Ordinance No. 1984-04, amending the future land use designation of “Commercial” to “Multi-Family Residential” for a 15.24-acre property located at the southeast corner of S.E. Indian Street and South Kanner Highway in the City; and

WHEREAS, on September 26, 2005, the City of Stuart City Commission adopted Ordinance No. 2042-05, to rezone an 11.27-acre property on the south side of S.E. Indian Street east of the intersection with South Kanner Highway to establish the Villagio Residential Planned Unit Development (RPUD) for “Villagio”, declaring the RPUD development to be consistent with the Comprehensive Plan of the City; revising the zoning map accordingly; approving certain development documents; approving certain conditions of development; and repealing all ordinances; and

WHEREAS, on January 6, 2017, the City of Stuart City Commission approved Ordinance No. 2340-2017 which granted Commercial Planned Unit Development (CPUD) zoning for the subject property for that certain 1.92 acres of land located on the south side of S.E. Indian Street approximately 580 feet east of the intersection of S.E. Kanner Highway and S.E. Indian Street; and the City of Stuart City Commission approved a site plan for the 9.35-acre RPUD by Ordinance 2340-2017 for the development of Clarity Pointe Assisted Living Facility on the RPUD portion of the PUD; and

WHEREAS, on May 22, 2017, the City of Stuart City Commission adopted Ordinance No. 2344-2017, for the abandonment of that certain 40-foot public right-of-way within the City, as set forth on the Plat of Stuart Farms, as recorded in Plat Book 1, Page 63, Martin County, Florida Public Records running north to south through the property; and

Ordinance No.: 2530-2025 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Rezone to Mixed-Use Planned Unit Development (MXPUD)

WHEREAS, on January 8, 2018, the City of Stuart City Commission adopted Resolution No. 06-2018, approving the Plat titled “Clarity Pointe” prepared by Peter Andersen, a Florida Professional Mapper No. 5199; and

WHEREAS, on March 26, 2018, the City of Stuart City Commission adopted Ordinance No. 2369-2018, amending a 1.92-acre Commercial Planned Unit Development (CPUD) and a 9.35-acre Residential Planned Unit Development (RPUD) agreement known as the Clarity Pointe PUD, adopted by Ordinance No. 2340-2017, thereby approving a site plan for the 1.92-acre CPUD parcel to construct 16,000 square feet of commercial; approving certain conditions of development specific to the CPUD; providing for timetables of the development; and

WHEREAS, on February 9, 2024, an application was submitted to the City of Stuart for a Petition requesting approval of a rezoning from the existing Residential Planned Unit Development (RPUD) for a Mixed-Use Planned Unit Development (MXPUD) with a concurrent site plan to incorporate a 9.46-acre parcel within the overall 11.27-acre Clarity Pointe PUD, as authorized the City Commission via Ordinance 2340-2017, to convert the former 84-bed Assisted Living Facility with memory care to allow for inpatient mental health and a 140-bed residential drug, and alcohol rehabilitation facility with medical detox; and

WHEREAS, the City of Stuart Local Planning Agency (LPA) Board held a properly noticed hearing at a regularly scheduled meeting on March 14, 2024, to consider the Applicant’s request and voted to recommend approval of the subject Petition to the City Commission. The motion failed 2/2; and

WHEREAS, the City Commission held two properly noticed public hearings with the First Reading of the Ordinance at a regularly scheduled City Commission Meeting on May 13, 2024, and the Second Reading of the Ordinance at a regularly scheduled City Commission Meeting on

Ordinance No.: 2530-2025 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Rezone to Mixed-Use Planned Unit Development (MXPUD)

May 28, 2024 and taking in consideration the LPA’s recommendations, all written and oral comments at the public hearing, the analysis by the City’s Development Department and the evidence and testimony presented by the parties at the public hearings, granted approval of the Rezone Petition submitted by Jason Ackner, Perseverance Recovery Center, LLC (Applicant) representing a 9.46-acre parcel of land; and

WHEREAS, at the hearing, the Applicant showed by substantial competent evidence that the Application is consistent with the City of Stuart Comprehensive Plan and Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the City of Stuart City Commission has determined the Application is consistent with the overall planning and development goals and objectives of the City; and

WHEREAS, the Applicant has committed to the City that its development will comply with all development codes, plans, standards, and conditions approved by the City Commission and that it will bind its successors in title to any such commitments made upon approval of the Commercial Planned Unit Development (CPUD); and

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law; and

WHEREAS, the property is legally described in “**Exhibit A**” attached hereto of this Ordinance. A map depicting the property is attached hereto as **Exhibit “B”** and made a part hereof by reference.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The foregoing recitals are true and adopted as findings of fact and conclusive of laws.

SECTION 2: A legal description of the Ackner 500 S.E. Indian Street CPUD parcel is set forth in “**Exhibit A**” attached hereto and made a part hereof by reference. A boundary survey is attached hereto as “**Exhibit B**” and made a part hereof by reference. The conditions of development for the property are attached hereto as “**Exhibit C**” and made a part hereof by reference, and each shall constitute one of the development documents.

SECTION 3: The following new documents are on file as Public Records of the City, at the office of the City Clerk at City Hall, and attached hereto as “**Exhibit D**”, hereinafter the “Development Documents”, shall be deemed a part of the development conditions, and shall supplement all earlier approval documents.

SECTION 4: The Owner’s written acceptance of this Ordinance shall constitute an agreement with the City for the purposes expressed herein, but the same shall not be construed as a “Development Agreement,” as provided in Section 163.3221, Florida Statutes.

SECTION 5: Except as otherwise provided herein, no development permits, site permits, or building permits shall be issued by the City except in compliance with the City’s Land Development Code. The failure of the Owner to comply with the development with any term or condition of development set forth in this Ordinance shall be deemed a zoning violation and no further permits, or other development approvals or orders shall be issued by the City to the Owner until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Owner to seek administrative or judicial redress.

SECTION 6: Following the adoption and acceptance of this ordinance by the Owner, and in addition to any other action for failure to complete development or otherwise comply with the Development Documents, the City Development Director may obtain a hearing before the City Commission, and shall thereupon give at least five (5) days written notice of the time, date and

Ordinance No.: 2530-2025 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Rezone to Mixed-Use Planned Unit Development (MXPUD)

location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission, the developer may appear and may contest the allegation of breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Development Documents and therefore, the Ordinance(s) adopting the same, the City Commission may impose or do any or all of the following:

- a. Initiate the process to amend or repeal this or any other ordinance pertaining to the development.
- b. Direct the City Development Director to initiate the process to rezone the CPUD property or any portion of the CPUD property.
- c. Impose an administrative penalty of up to \$1,000.00 for each violation, and up to \$5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this CPUD Ordinance by the developer shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 7: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 8: This Ordinance and agreement shall be effective upon the last of the following to occur: adoption by the City Commission, and proper execution and acceptance by the Owner.

SECTION 9: The complete execution and recording of this Ordinance by the City Clerk shall occur no later than 45 days from the date of this approval, failing to do which this Ordinance shall be void.

Ordinance No.: 2530-2025 Ackner – 500 SE Indian Street (aka Clarity Pointe PUD)
Rezone to Mixed-Use Planned Unit Development (MXPUD)

SECTION 10: Upon complete execution of this Ordinance, the City Clerk is directed to record this Ordinance in the Public Records of Martin County, Florida.

PASSED on first reading the ____ day of _____ 2024.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

REBECCA S. BRUNER, MAYOR
CAMPBELL RICH, VICE MAYOR
EULA R. CLARKE, COMMISSIONER
CHRISTOPHER COLLINS, COMMISSIONER
TROY MCDONALD, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this ____ day of _____ 2024.

ATTEST:

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

LEE J. BAGGETT, ESQ.
CITY ATTORNEY

EXHIBIT A – LEGAL DESCRIPTION

PARCEL 1:

LOT 1 CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA (RPUD TRACT)

PARCEL 2:

COMMON AREA - UPLAND PRESERVE TRACT, LAKE TRACT, ACCESS TRACT - CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA

ADDRESS:

500 S.E. INDIAN STEET

PARCEL I.D. No.:

40-38-41-010-000-00010-0, 40-38-41-010-000-00001-0

EXHIBIT “B” – BOUNDARY SURVEY

EXHIBIT “C” – DEVELOPMENT CONDITIONS

EXHIBIT “D” – DEVELOPMENT DOCUMENTS



To: City Commission

From: Jodi Kugler, Development Director

Date: Monday, April 22, 2024

Project Name: Ackner – 500 SE Indian Street (*aka Clarity Pointe PUD*)

Application Type: Rezone to Mixed-Use Planned Unit Development (MXPUD)

Property Owner: CP Stuart Development I, LLC
4300 Legendary Drive, Suite 234
Destin, FL 32541

Agent of Record: Connor Kennedy
Applicant Engineering Design & Construction, Inc
10250 SW Village Parkway, Suite 201
Port Saint Lucie, FL 34987

Jason Ackner
Perseverance Recovery Center, LLC
318 U.S. Highway 1, Suite 200
Jupiter, FL 34987

APPLICATION SUMMARY: The Applicant submitted a petition requesting approval of a rezoning from the existing Residential Planned Unit Development (RPUD) for a Mixed-Use Planned Unit Development (MXPPUD) with a concurrent site plan to incorporate a 9.46-acre parcel within the overall 11.27-acre Clarity Pointe PUD, as authorized the City Commission via Ordinance 2340-2017, to convert the former 84-bed Assisted Living Facility with memory care to allow for inpatient mental health and 140-bed residential drug, and alcohol rehabilitation facility with medical detox.

The Applicant submitted a concurrent petition for a Small-Scale Future Land Use Amendment from the Multi-Family Residential (MF/RES) District to a Commercial (COMM) District to align with an inpatient rehabilitation facility's proposed use.

STAFF RECOMMENDATION: Staff is requesting Discussion and Direction from the City Commission.

LOCAL PLANNING AGENCY (LPA): The Local Planning Agency held a public hearing for the rezoning petition on March 14, 2024, and voted to forward a recommendation of approval to the City Commission. The motion failed 2/2.

PUBLIC NOTIFICATION: The Applicant mailed letters to owners located within 300 feet of the petition site, detailing the proposed project. A public notification sign was posted on the premises.

Clarity Pointe PUD
Rezone to Mixed-Use Planned Unit Development (MXPUD)

SITE DATA:

Location:	The subject property is located at 500 SE Indian Street situated on the south side of SE Indian Street, approximately 580 feet east of the intersection of SE Kanner Highway and SE Indian Street.
Property Control Number(s)	40-38-41-010-000-00010-0, 40-38-41-010-000-00001-0
Existing Future Land Use Designation:	Multi-Family Residential (MF/RES) District
Proposed Future Land Use Designation:	Commercial (COMM)
Existing Zoning District:	Residential Planned Unit Development (RPUD)
Proposed Zoning District:	Mixed-Use Planned Unit Development (MXPUD)
Total Acreage:	11.27
Affected Acreage:	9.46
Overlay District:	N/A
Existing Use:	84-bed Assisted Living Facility (ALF) with memory care
Proposed Use:	140-bed Inpatient Mental Health, Drug, and Alcohol Rehabilitation Facility with Medical Detox

PROJECT HISTORY:

Request	Resolution
Annexed into the City of Stuart and assigned to the Commercial (COMM) Future Land Use category in 1997	1997
Amend the Commercial (COMM) Future Land Use designation to Multifamily Residential (MF/RES) for an 11.27-acre property.	Ordinance 1984-2004
Established the Villagio Residential Planned Unit Development (RPUD) to construct a 66 multi-family development	Ordinance 2042-2005
Approved the rezoning of 11.27-acre to activate and amend the expired Villagio Stuart RPUD with a master plan to develop a one-story 96,713 square foot 84-bed ALF with memory care and create a 1.92-acre commercial outparcel as part of the overall 11.27-acres. Additionally, the 1.92-acre outparcel was assigned a Commercial (COMM) Future Land Use category and rezoned from RPUD to CPUD. The overall will be known as Clarity Pointe PUD and will consist of a 1.27-acre lake in the center of the property and 2.81-acres of preserved area. The 1.92-acre outparcel will front SE Indian Street and proposed retail uses.	Ordinance 2340-2017
Abandonment of the 40-foot right-of-way within the Clarity Pointe PUD	Ordinance 2344-2017
Approved the Plat for Clarity Pointe PUD and recorded with the Martin County Clerk of Courts, Book 17, Page 1 of 2.	Resolution 06-2018
Major Amendment to the CPUD Master Site Plan for the 1.92-acre commercial outparcel to construct two (2) 8,000 square foot buildings or leasable office space and general commercial space.	Ordinance 2369-2018

CONSISTENCY OF THE CITY OF STUART LAND DEVELOPMNENT REVIEW

Any Major Amendment to a previously adopted Planned Unit Development (*PUD*) Zoning Ordinance, including conditions, agreements, covenants, maps, and illustrations shall be processed as if the proposed amendment is a new Rezoning application, according to the City of Stuart Land Development Code (*LDC*) Section 11.01.09 – Planned Unit Development Application.

Per the LDC Section 11.01.09 – Zoning Map Change Application Including PUD, the Local Planning Agency (*LPA*) shall be tasked with reviewing a Major PUD Amendment and providing an advisory recommendation to the City Commission. The LPA shall consider the application, written comments of each responding city department, consultant, or agency, as well as the compliance recommendation of the Development Department. Specifically, the City Commission shall consider the following criteria:

a. The existing land use pattern.

Staff Findings: The adjacent Commercial (COMM) is part of the overall unified development with compatible uses under the previously approved PUD. The proposed Amendment of the Official Zoning Atlas is not in conflict with the applicable provisions of the Land Development Code, Comprehensive Plan, and Planned Unit Development Regulations.

ADJACENT LAND USE & ZONING:

Location		Zoning District	Future Land Use	Existing Land Use
<i>Subject Property</i>		<i>Residential Planned Unit Development (RPUD)</i>	<i>Multi-Family Residential (MF/RES)</i>	<i>Formal Assisted Living Facility (Clarity Pointe RPUD)</i>
Adjacent Parcels	North	Residential Planned Unit Development (<i>RPUD</i>)	Multi-Family Residential (<i>MF/RES</i>)	The Crossings Multi-Family Residential Development
	South	PUD-R (<i>Residential (Martin County Jurisdiction)</i>)	Low Density-up to 5 UPA (<i>Martin County Jurisdiction</i>)	Undeveloped / Vacant
	East	Commercial Planned Unit Development (<i>CPUD</i>)	Commercial (<i>COMM</i>)	Palmetto Edge Shopping Center
	West	Commercial Planned Unit Development (<i>CPUD</i>)	Commercial (<i>COMM</i>)	5-acre Drainage Tract

Objective 1.A7 – Future Land Use Categories:

Commercial: Land uses and activities predominately connected with the sale, rental, and distribution of products or performance of professional and non-professional services. Includes retail sales, service establishments, businesses, professional and other offices, shopping centers, financial institutions, restaurants, entertainment, hotels, motels, and other temporary lodging. A limited amount of Multi-Family Residential and indoor industrial use is allowed. Mixed-use projects are allowed. Also, public facilities and electric distribution substations are allowed.

Martin County Comprehensive Plan – Future Land Use Element

Policy 4.13A.7 – Residential Development:

Low-density residential development. *The Low-Density Residential designation is reserved for land in the Primary Urban Service District. Densities shall not exceed five units per gross acre. In reviewing specific densities, the aim shall be to preserve the stability and integrity of established residential development and provide equitable treatment to lands sharing similar characteristics. Landscaping, screening, buffering, and similar design techniques shall be used to ensure a smooth transition between residential structure types and densities.*

Policy 4.13A.8 – Commercial Development:

Commercial Office/Residential Development (COR): *Martin County shall establish policies and criteria to guide mixed-use development. Commercial Office/Residential development shall be allocated to accessible sites adjacent to major thoroughfares. It shall also serve as a transitional use separating more intensive commercial uses from residential development. Office and residential development may be allocated along the outer fringe of core commercial areas where such development may encourage reinvestment in declining residential areas adjacent to commercial core areas. The COR future land use designation shall also be allocated to areas appropriately suited for Traditional Neighborhood Development, described under Goal 4.3. The development provisions for the standard COR zoning districts and the PUD zoning district are expressed below:*

b. The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.

Staff Findings: The requested rezone will not create an isolated zoning district to the adjacent and nearby districts.

c. The population density pattern of the area and possible increase or overtaxing of the load on public facilities such as schools, utilities, and streets.

Staff Findings: The proposed rezoning will decrease the population density pattern and is not anticipated to increase the load on public facilities, such as schools, utilities, and streets. **The proposed use is considered temporary lodging in nature as opposed to assisted living facilities and is considered permanent residences for the elderly population.**

d. The possible overloading of the city's sewage collection, treatment, and disposal facilities.

Staff Findings: The existing infrastructure was reviewed by the City of Stuart Public Works Department which has determined the City of Stuart Public Works the sewage collection, treatment, and disposal facilities are adequate.

e. The possible overloading of the city's drainage system.

Staff Findings: The existing drainage was constructed in accordance to the City of Stuart Public Works guidelines and is determined to be adequate for the proposed use.

f. The existing district boundaries in relation to existing conditions on the subject property.

Staff Findings: As stated in the narrative dated February 6, 2024, the applicant intends to convert the former 84-bed assisted facility into an inpatient mental health, drug, and alcohol rehabilitation facility with medical detox.

h. The existence of changed or changing conditions that make the passage of the proposed amendment necessary or appropriate.

Staff Findings: The existing classification boundaries are compatible in relation to the existing conditions on the subject property. The City of Stuart Land Development Code does not have a distance requirement for other similar facilities.

i. The impact of the proposed amendment upon living conditions in the adjacent neighborhood.

Staff Findings: The proposed amendment is not anticipated to impact the adjacent neighborhood. The residential communities near the commercial portion of the site consist of the Crossing at Indian Run, Willoughby Crossroads, and Willoughby Golf Club. The Willoughby Crossroads is the most impacted but is already within a mixed-use development. The Crossings at Indian Run is buffered by a robust 30-foot opaque landscape buffer on the property along Indian Street, and the Indian Street right-of-way, as well as a preserve and retention area on the residential property. The Willoughby Golf Club is buffered not only by the site's 2.81-acre preserve area but is owned extensively by residential communities.

j. The impact of the amendment upon the flow of light and air to adjacent areas.

Staff Findings: The rezoning is not anticipated to impact the adjacent neighborhood. The residential communities near the commercial portion of the site consist of the Crossing at Indian Run, Willoughby Crossroads, and Willoughby Golf Club. The Willoughby Crossroads is the most impacted but is already within a mixed-use development. The Crossings at Indian Run is buffered by a robust 30-foot opaque landscape buffer on the property along Indian Street, and the Indian Street right-of-way, as well as a preserve and retention area on the residential property. The Willoughby Golf Club is buffered not only by the site's 2.81-acre preserve area but is owned extensively by residential communities.

j. The impact of the proposed amendment upon property values in the adjacent area.

Staff Findings: The proposed rezoning is not anticipated to impact the property values within the adjacent area.

k. The impact of the proposed amendment upon improvement or development of adjacent property in accordance with existing regulations.

Staff Findings: The adjacent properties situated to the north, east, and south of the subject parcel are currently developed and include a variety of existing commercial uses. The properties to the west are also developed as an existing single-family neighborhood and private golf course known as Willoughby Gold Club.

k. The existence of other adequate sites in the city for the proposed use in districts already permitting such use.

Staff Findings: The subject property is less than a half-mile radius of an existing 80-bed inpatient mental health facility and was assigned a commercial land use category with mixed-use planned unit development zoning designation. The City of Stuart Land Development Code does not have a distance requirement for such facilities.

The Clarity Pointe PUD request to Rezone to Official Zoning Map Atlas has been reviewed per the following Goals, Objectives, and Policies outlined within the City of Stuart Comprehensive Plan:

ELEMENT 1 - FUTURE LAND USE ELEMENT

Policy 1.A3.2: *The City's Future Land Use Map and land development regulations shall direct development to areas where adequate utilities, services, and schools exist or are planned in order to protect natural resources.*

Policy 1.A3.3: *The City shall designate and protect environmentally sensitive lands including viable and functioning wetlands as determined by the SFWMD and native vegetative communities that provide wildlife habitat for listed species. Protection measures will include performance standards regulating land use, public access, marina siting and activities, wetlands, shoreland alteration and seawalls, treatment of stormwater runoff, mangrove protection, and provisions for developers to preserve environmentally sensitive land, including transfer of development rights and density bonuses.*

Policy 1.A5.1: *The Future Land Use Element of the City's adopted Comprehensive Plan shall provide land for future residential use to promote a more compact development pattern. This shall include sufficient land suitable for the public utility facilities needed to support the projected level and pattern of development.*

Policy 1.A5.3: *Wherever possible, medium-density residential and recreation/open space areas should serve as buffers between higher and lower-intensity residential uses to achieve an orderly land use transition.*

Objective 1.A7 – Future Land Use Categories: *The future land use categories defined below provide general descriptions intended to encompass all present and future land uses in the City of Stuart. The "Table of Land Use Densities and Intensities" provides specific density and intensity measures that shall establish the maximum density and intensity allowed in each land use category. The Future Land Use Map establishes the optimum, overall distribution of land uses as well as can be established on a City-wide basis. Neither these policies nor the Future Land Use Map shall be construed to mean that every parcel in a designated area is suitable for the designated use. Other plan objectives and policies will be applied to ensure that any proposed development will be suitable for the particular site. Similarly, the Future Land Use Map does not assure the landowner the right to the most intense use allowable under the designated future land use category. The City shall have the discretion to decide that the permitted land use shall be more limited than the maximum allowable under the future land use category; provided, that the City shall approve some development that is consistent with the City's plan.*

Policy 1.A7.1: *The City of Stuart has designated the following land use categories and allowed uses for all land within the City of Stuart:*

Commercial: *Land uses and activities predominately connected with the sale, rental, and distribution of products or performance of professional and non-professional services. Includes retail sales, service establishments, businesses, professional and other offices, shopping centers, financial institutions, restaurants, entertainment, hotels, motels, and other temporary lodging. A limited amount of Multi-Family Residential and indoor industrial uses are allowed. Mixed-use projects are allowed. Also, public facilities and electric distribution substations are allowed.*

Objective 1.B1 – Compact Urban Form: *Discourage urban sprawl by facilitating urban redevelopment and infill development of properties and planning for urban infill and redevelopment of lands located within Stuart in order to achieve a compact urban form.*

Objective 1.B2 – Provision of Facilities and Services: *The Future Land Use Element shall establish land uses which can be served by existing and planned facilities and services. The plan shall achieve and maintain the level-of-service (LOS) standards adopted in the Capital Facilities Element and shall provide sufficient land suitable for public facilities needed to support the projected level and pattern of development.*

The City of Stuart's Land Development Code outlines where inpatient rehab facility use is permitted. However, the Mixed-Use PUD Zoning designation aligns with zoning designations where such use has historically been permitted within the City of Stuart. Furthermore, as shown in Sec. 2.01.03. – Table 1. of the City of Stuart Land Development Code, the Mixed-Use PUD (MXPUD) Zoning district is compatible with Commercial Future Land Use.

While the use will be changing, the building footprint will not. As such, this application complies with all relevant development standards of the City of Stuart Land Development Code.

Table 2.01.03.1 - ZONING DISTRICT/FUTURE LAND USE CATEGORY COMPATIBILITY

Future Land Use Category	Implementing Zoning Districts											PUD	Urban District	East Stuart Neighborhood	S.E. Ocean Blvd.
	R-1A	R-1	R-2	R-3	B-1	B-2	B-3	B-4	P	I	H				
Commercial					X	X	X	X				CPUD IPUD MXPUD UP			X

2.07.00. - DESIGNATION OF PLANNED UNIT DEVELOPMENT (PUD)

Purpose. The purpose of this section 2.07.00 is to provide an alternative means of residential, commercial, public service, and industrial land development and an alternative zoning procedure that may be used to establish residential, commercial, public service, and industrial planned unit development zoning districts at appropriate locations and in accordance with the planning and development objectives of the city.

A Planned Unit Development (PUD) established according to the provisions of this section may depart from the strict application of use, setback, parking requirements, and other requirements of standard zoning districts. A PUD shall be consistent with the overall planning and development goals and objectives of the city as reflected by the City of Stuart Comprehensive Plan. The primary purpose of this section is to provide a set of zoning requirements as a starting point from which such flexibility may be accomplished while maintaining and protecting the public health, safety, and welfare of the citizens.

The second purpose of this section is to establish a resilient living and working environment through the application of enlightened and imaginative approaches to community planning, stormwater infrastructure, and property design. A PUD should provide a variety of natural features and scenic areas, efficient and economical land use, improved amenities, orderly and economic development, and the protection of adjacent existing and future development. Therefore, the PUD alternative may allow uses and design concepts which are not specifically allowed in standard zoning districts.

To the extent that any provisions of this section conflict with any other provisions of this Code, the provisions of this section shall prevail.

PUD defined. A PUD may be a residential planned unit development (RPUD), a commercial planned unit development (CPUD), a mixed-use planned unit development (MXPUD), an industrial planned unit development (IPUD), an urban planned unit development (UPUD), or a public service planned unit development (PSPUD). A PUD shall consist of land under unified control which may be planned and developed as a whole as a single development operation or as an approved programmed series of development operations by multiple developers. A typical PUD will include principal and accessory uses and structures substantially related to the character of the development itself and to the surrounding area of which it is a part.

As used above, "unified control" means that all land to be included within a PUD shall be owned or otherwise under the legal control of the person or legal entity which has applied for PUD district zoning. Such person or entity shall be legally capable of providing a commitment to the city that the PUD development will comply with all PUD documents, plans, standards, and conditions ultimately approved by the city.

A PUD district shall consist of the approved PUD classification and the regulations thereof set forth in this section 2.07.00, as well as any other documents specifically included within the PUD ordinance adopted by the city commission. The ordinance approving a PUD shall be deemed a zoning ordinance. The provisions of the PUD zoning ordinance shall replace all conflicting development regulations set forth in this Code which would otherwise apply to the development site. The PUD ordinance shall be recorded in the public records of Martin County. The PUD applicant shall also execute a PUD agreement that incorporates the terms and conditions that are set forth in the PUD ordinance.

The applicant may proceed with development only after a plat if required by the city commission, is recorded in the Martin County public records, and after certification by the city development director that the construction plans and other required documents substantially conform to all documents approved as part of the PUD ordinance. The applicant must produce evidence that would bind his successors in title to any commitments made upon approval of PUD.

2.07.00.H. - Mixed-use planned unit development (MXPUD) districts.

Location. An MXPUD may be located anywhere in the city in any area defined and described "office/residential," "multi-family residential," "commercial," "industrial," "institutional," "recreation," "downtown redevelopment," "East Stuart," "marine/industrial," or "neighborhood/special district," and "public," by the future land use element of the City of Stuart's Comprehensive Plan. and which is of suitable character and compatible with surrounding uses as determined by the city commission.

Uses permitted in an MXPUD district. The buildings, structures, land, or water within an MXPUD district are subject to the following requirements:

*An MXPUD shall be any combination of two or more integrated residential, **commercial**, hospital, governmental, and light industrial uses, providing such uses are compatible with existing conforming uses on adjacent property as determined by the city commission.*

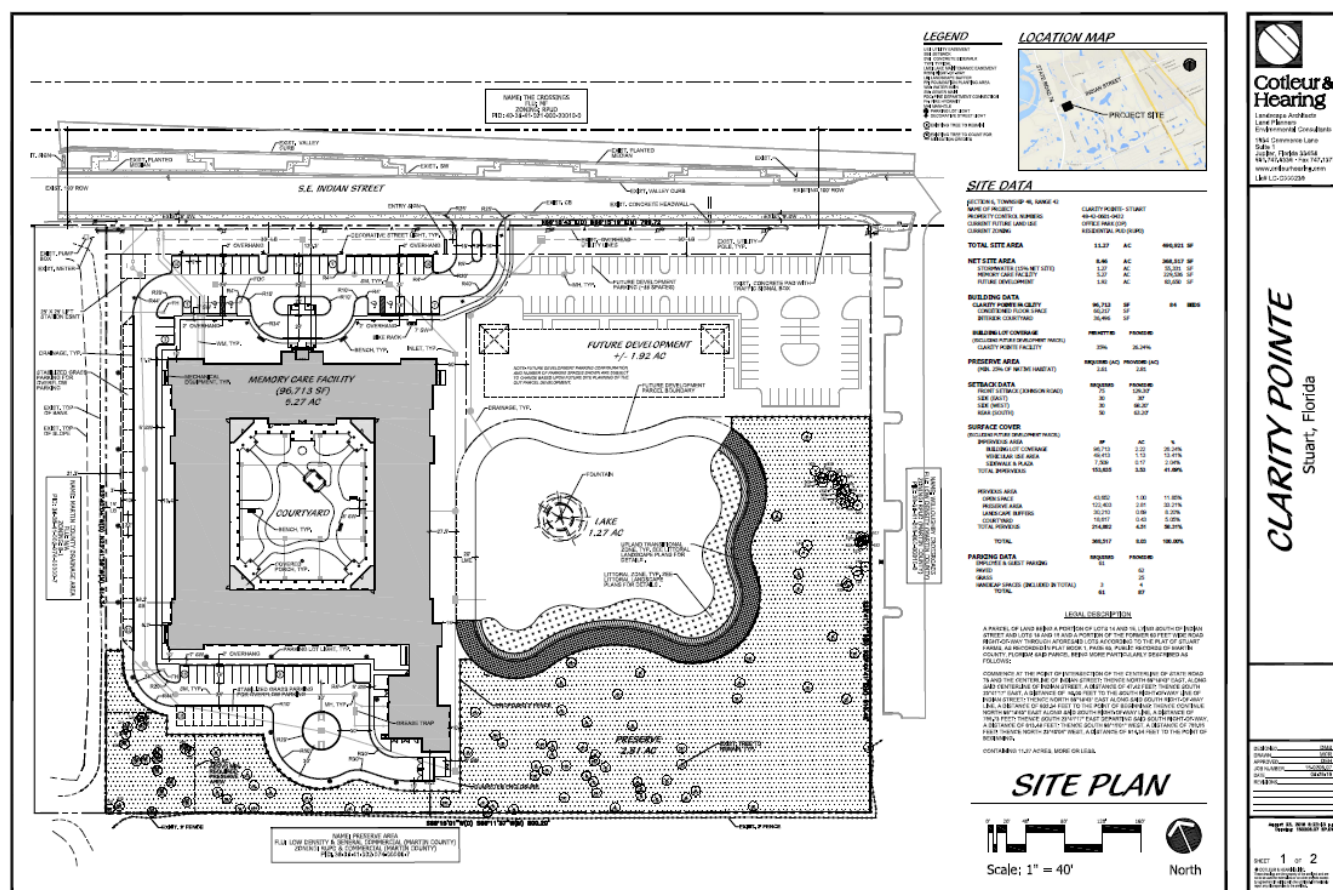
*Residential uses integrated into the MXPUD shall be designed to be compatible, and developed in combination, with any **associated commercial**, retail, **medical**, governmental, and light industrial uses.*

- *Commercial uses not specifically set forth in any of the standard zoning categories, but which are compatible and of like nature and quality to those commercial uses permitted in B-1, B-2, B-3, and B-4 or R-3 zoning classifications are allowed, as determined by the city commission.*
- *Industrial (high-impact) uses as identified in section 2.02.02, Table 2, of the Code may be permitted subject to a major conditional use approval as approved by the city commission.*
- *Governmental or other public uses as permitted by the city commission.*
- *Adult business uses or agricultural uses as specified in section 2.02.02, Table 2 are not permitted.*

CLARITY POINTE PUD - 2016 APPROVAL ANALYSIS (ORDINANCE NO. 2340-2017)

The existing Assisted Living Facility located on site will be converted to the proposed inpatient drug and alcohol rehabilitation facility. As previously stated, no new improvements are being proposed. **While the facility's bed count will increase from 84 to 140 beds, the building footprint is not being altered.** As such, this facility will remain consistent with the adopted levels of service for utilities and facilities as they are outlined in the Capital Improvements element of the City's Comprehensive Plan.

Exhibit 1.1 - Site Plan



Environmental Review

All Environmental requirements, including landscaping, were satisfied during the construction of the ALF.

Landscaping, Trees, and Upland Preserve: The existing landscape buffers were provided on all sides of the property per the City's Land Development Code, which included a 30-foot-wide landscape buffer along SE Indian Street and a 15-foot landscape buffer along the eastern property line, to be consistent with the PUD.

Based on the total PUD, approximately 58.31% will remain pervious, which includes open space, a preserve area, landscape buffers, and a courtyard used by the previously approved Clarity Pointe Assisted Living Facility. The existing landscaping area represents approximately 8.2% of the total area and offers variety, 75% native specimens, and 64% categorized as shade trees. Within the CPUD, 34,256 square feet of landscaping is provided, which was twice the minimum amount required of the 20% gross area. The eastern buffer provides 9 shade trees, where 7 are required; and 15 shade trees are provided along Indian Street, where 14 are required.

As part of the original approval, tree replacement was required as the developer removed approximately 4,849.5" of slash pines and 1025" of other hardwoods at the adoption of the master PUD. The replacement mitigation proposed includes 1,602" of tree mitigation as planted trees and therefore 4,272.5" of mitigation will be required. The payment into the tree fund was required before the approval of vertical construction and was paid in full to the city's tree fund.

The existing vegetation on the site was surveyed and reviewed by the City's Environmental Consultant and the Preserve Area Maintenance Plan (PAMP) provided by the applicant. The proposed plan required a 25% upland preserve set aside (or 2.61 acres) as part of the PUD requirements. To satisfy the City's Environmental Consultant, the PAMP included a five-year maintenance plan and the preserve area be maintained by the property owner.

perpetuity. There is no upland preserve areas in the CPUD portion of the PUD.

Exhibit 1.2 – Open space outlined in green

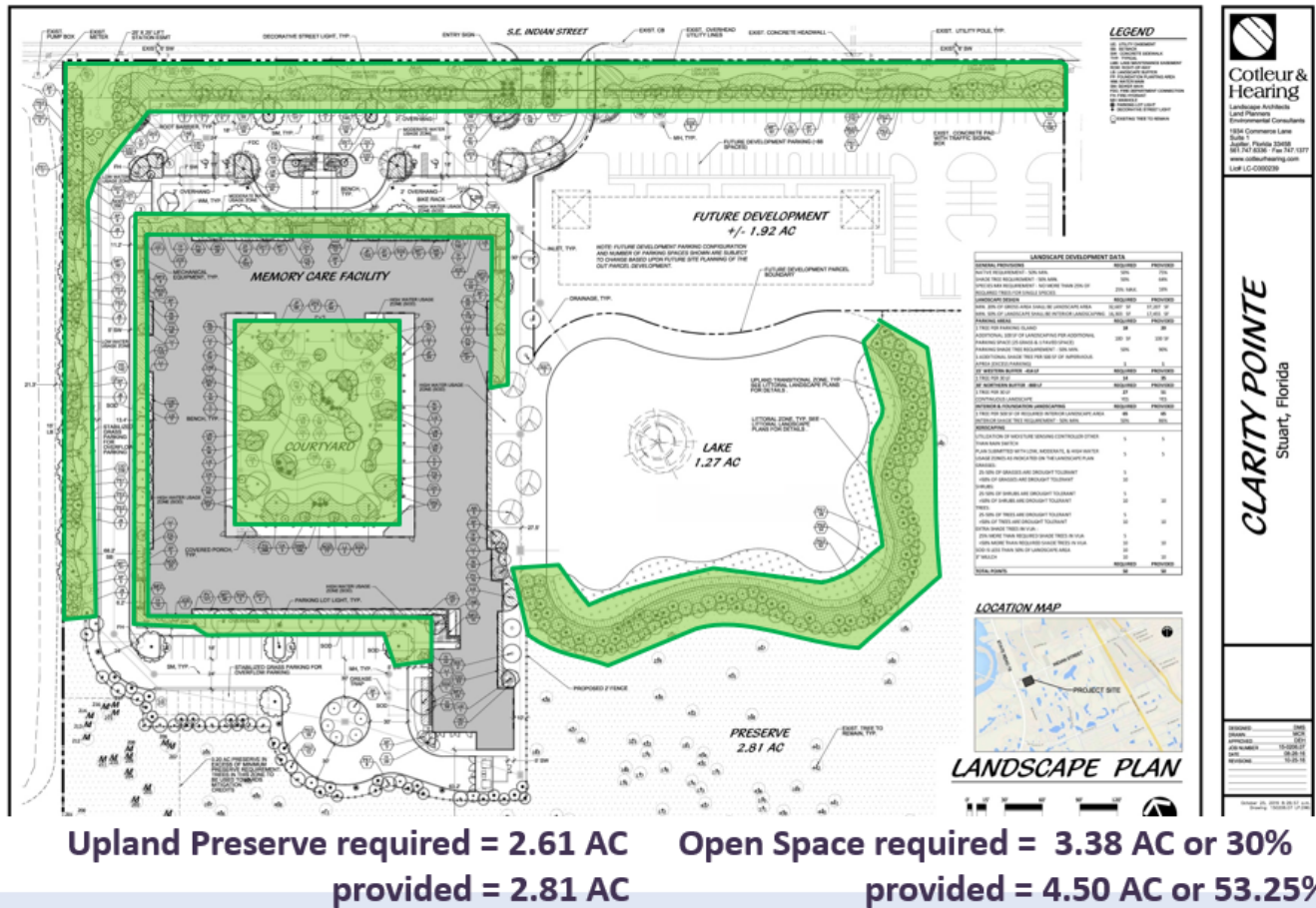


Exhibit 1.3 – Landscape Plan

Wetland Mitigation: Although there are no wetlands on the CPUD portion of the PUD, the existing .88-acre wetland within the master PUD was replaced with a lake that will have littoral plantings and native wetland vegetation plantings amounting to a total of 10 square feet of coverage for every one linear foot of shoreline. Mitigation will be required for both the existing trees and the identified wetlands on site.

Furthermore, to promote compact urban development and discourage urban sprawl, the City allows Wetland impacts under certain conditions. The LDR at 5.03.02 B permits impact providing mitigation requirements are met. All mitigation will be carried out on-site.

WETLAND MITIGATION/WETLAND PRESERVE		
	Required	Provided
Native vegetation area	25%	27%
Wetland Area	A Wetland Area of 2.81 acres is preserved	
Wetland Preserve	Minimum 25ft with an average 50ft wetland buffer	Minimum 25ft with an average 50ft wetland buffer
Upland Preserve	25%	26.7%

New Traffic Review: JFO Group, Inc. prepared a traffic statement (dated February 8, 2024) related to the above-mentioned project, in compliance with Section 4.05. of the City of Stuart Land Development. Based on the analysis below:

Project trip generation rates were based on the *Institute of Transportation Engineering (ITE) Trip Generation Manual 11th Edition*. When fitted curve equations were not available, weighted average rates were used. Similarly, when data plots had at least 20 data points and a fitted curve equation with an R2 of at least 0.75, fitted curve equations were used. Table 1 shows the rates used to determine the trip generation for Daily, AM, and PM peak hour conditions while Table 2 summarizes the net Daily, AM, and PM peak trips potentially generated by the existing and proposed development. Exhibit 4 includes excerpts from the ITE trip generation manual for ITE Land Use Code 254.

Table 2: Trip Generation

Land Use	Intensity	Daily Traffic	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
EXISTING DEVELOPMENT								
Assisted Living	84 Beds	218	9	6	15	8	12	20
Net Existing Traffic		218	9	6	15	8	12	20
PROPOSED DEVELOPMENT								
Mental/Drug Rehab	140 Beds	364	15	10	25	13	21	34
Net Proposed Traffic		364	15	10	25	13	21	34
Net Traffic		146	6	4	10	5	9	14

The proposed changes to the 500 SE Indian St property have been evaluated following *Sec. 4.04.05. of the City of Stuart Land Development Code*. This analysis shows the proposed request to convert an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility will generate less than 20 peak-hour trips.

The City's Traffic Consultant, Kimley-Horn evaluated the trip generation of the existing site relative to the proposed use. The existing site currently operates as an assisted living facility, which is consistent with the previously approved traffic study. A mental health/rehab facility is proposed, which is similar to the existing use, with a maximum increase from the existing 86 beds to 140 beds.

The proposed increase to a maximum of 140 beds has the potential to generate a net increase of 146 daily, 10 (6 entering, 4 existing) AM peak hour, and 14 (5 entering, 9 existing) PM peak hour trips. Based on the net change in peak-hour trips (< 20) a traffic study is not required per the City of Stuart Land Development Code Section 4.04.05.

Furthermore, it should be noted that the change in Future Land Use (FLU) and Zoning designations do not increase traffic volumes as the proposed FLU and Zoning designations provide the same intensities as the existing FLU and zoning designations per the City of Stuart Comprehensive Plan and Land Development Code.

Access and Parking: The property has one shared point of vehicular access from SE Indian Street. Access to entry points of the CPUD out parcel and the ALF has met EMS vehicle turning movement requirements. The applicant has provided space for a future cross-access easement located on the western boundary. The applicant would be required to provide vehicular cross-access upon request from the City.

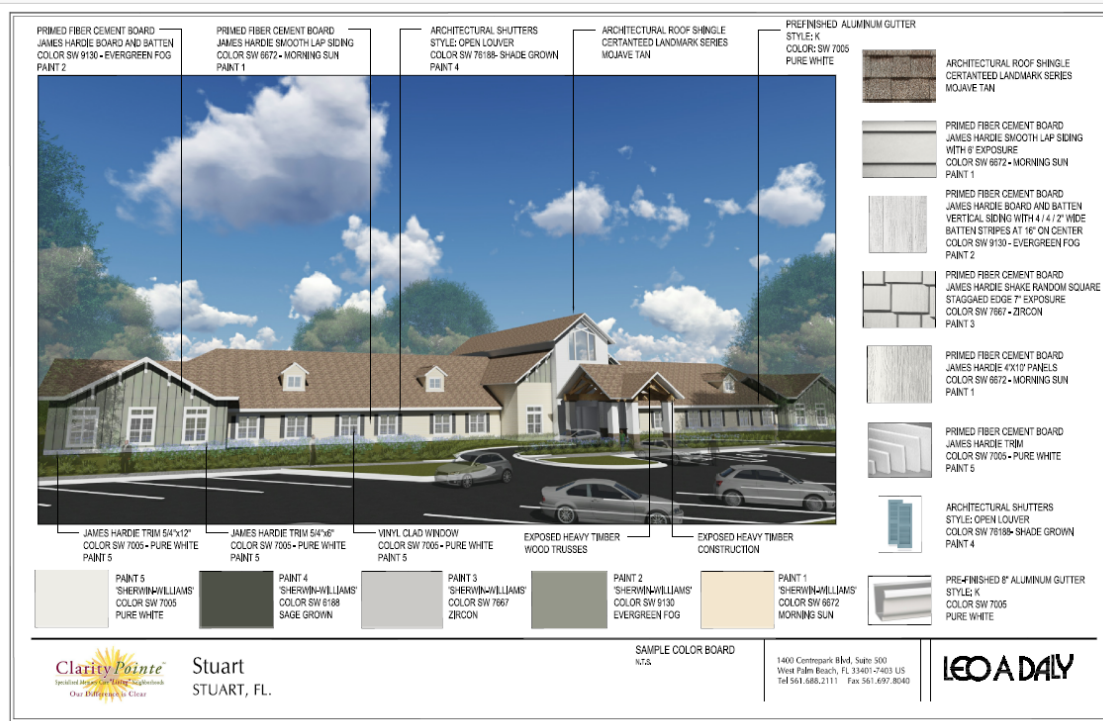
The site includes an internal pedestrian connection and interconnection with the sidewalk along SE Indian Street.

The applicant is providing 80 total parking spaces. The 16,000 square feet of commercial space is required to provide one parking space of 200 beds based on the most intense use (medical office). Therefore, 80 parking spaces are required.

Signage: One entry monument sign is proposed at the entrance to identify the Clarity Pointe project and two commercial signs are proposed along the front of the CPUD. The entry sign will be 10' from the right of way, no more than 10 feet in height by 15 feet in width. The two (2) signs along the frontage of the CPUD will both be tenant signs, no more than 6 feet high (with a 2-foot-high base) by 8 feet wide, with a signage area of 32 square feet, each sign.

Architecture: The theme of the architecture is South Florida Mediterranean style with an emphasis on residential elements, versus an institutional feel. The architecture of the CPUD out parcel should be compatible with the ALF and will follow the design principles outlined by reference in Ordinance 2340-2016. TI Architecture, Inc. provided staff with an architectural design compatibility analysis, which states that the proposed out-buildings incorporate horizontal score-line patterns that correspond with the ALF's lap-siding material. A matching paint color palette is incorporated, which includes a white trim, and a light cream building, with green or grey tower features. The white window and door frames are consistent between the buildings and the natural material of stone veneer to be utilized for the base of the commercial buildings is consistent with the dark-painted stucco columns at the base of the ALF. Finally, the analysis demonstrates that the pitched roof slopes and the natural finish of standing seam metal roofing are in keeping with the Design Guidelines approved in the Master PUD ordinance.

Exhibit 1.3 – Color Renderings



SITE DESIGN QUALITATIVE DEVELOPMENT STANDARDS

The purpose of these standards is to ensure that all site plan development complies with the Comprehensive Plan of the City and with the Stuart Land Development Regulations and to promote harmonious and compatible development within the City. The analysis was provided from the staff report prepared in 2016.

1. Harmonious and Efficient Organization: The proposed development is efficiently planned and through its design and layout takes account of existing and possible development near the site. The proposal reflects its surroundings and pattern of development. All vehicular use areas have been designed so as not to adversely impact the character of existing neighboring development. Site improvements required for construction should not negatively impact or have any harmful effects on adjacent properties.

2. <i>Preservation of Natural Conditions:</i> Per the City's Land Development Regulations RPUD standards, at least 30% of the total development site must comprise native vegetation. An existing Wetland is preserved and incorporated into the design and layout of the development.
3. <i>Screening and Buffering:</i> The Landscape Plan for the subject site proposes to create screening, preserve area, and landscape buffering in locations along the front, sides, and rear portion of the subject property. The scope and extent of the screening and buffering proposed is more than adequate.
4. <i>Enhancement of Residential Privacy:</i> Landscaping and site layout are proposed in such a manner that the existing and future abutting uses will not create a visual or auditory nuisance, in terms of potential impact upon the proposal.
5. <i>Emergency Access and Access to Public and Private Ways:</i> The proposed development provides adequate access for emergency vehicles. All elements of this proposal have been designed to incorporate safe and convenient access to all public and private ways throughout the site.
6. <i>Pedestrian Circulation:</i> A 6' (foot) sidewalk will be provided along SE Indian Street. Internal pedestrian links are provided together with a walkway through the wetland buffer area.
7. <i>Location and Design of Access Drives:</i> The site has one point of ingress and egress from SE Indian Street. Adequate stacking spaces are provided within the ingress driveway.
8. <i>Co-ordination of on-site and off-site circulation:</i> The proposed development has arranged and coordinated the internal drives and parking areas to facilitate efficient vehicular and pedestrian circulation. Both formal and informal pedestrian links flow through and interconnect the development. Connection is provided with off-site pedestrian routes.
9. <i>Location and Design of on-site ways:</i> The on-site driveways and parking areas have been located and designed to be minimal in form and to occupy no more land than is required to provide safe and convenient vehicular and pedestrian circulation.
10. <i>Drainage:</i> The drainage will be addressed in full at the final site plan submission. Per the City's Land Development Regulations, the site must provide water quality storage for the applicable run-off volume and limit post-development discharges at pre-development rates for all applicable design storm events. Drainage will be accommodated on-site in a manner that shall not adversely affect nearby property or the public storm drainage system.
11. <i>Exterior Lighting:</i> The proposed development will provide decorative exterior lighting at 15ft in height in vehicular and pedestrian use areas. The lighting does not conflict with the proposed landscaping and will not impact or produce glare on the nearby neighborhood, the Clarity Pointe ALF, or interfere with the aesthetics of the surrounding area or with public safety and convenience.

PROJECT NARRATIVE & COVER LETTER

500 SE Indian St.

Rezone Application Request

February 6, 2024

REQUEST

On behalf of the Petitioner, Engineering Design & Construction, Inc. is requesting approval of a rezone application for properties located at 500 SE Indian Street in Stuart, Florida. The applicant wishes to rezone the existing RPUD to an MXPUD designation to allow for an inpatient primary mental health and residential drug and alcohol rehabilitation facility with medical detox.

SITE CHARACTERISTICS & PROJECT HISTORY

The subject properties are located on the southside of SE Indian St approximately 540 feet east of Kanner Highway in Stuart Florida. They can be identified in the below table:

Parcel ID:	Address:	Acreage:	Future Land Use	Zoning
40-38-41-010-000-00010-0	500 SE Indian St	4.67	Multi-Family Residential	RPUD
40-38-41-010-000-00001-0	N/A	4.79	Multi-Family Residential	RPUD
Total Acres:		9.46		

The project currently has a Future Land Use designation of Multi-Family Residential and a Zoning designation of RPUD: Residential PUD.

Under the direction of the city following a Pre-Application Meeting on January 25, 2024, both a Rezoning Application and Small-Scale Comprehensive Plan Amendment are being submitted to the City of Stuart. The Rezone application requests a change in the sites zoning designation from Residential PUD (RPUD) to Mixed-Use PUD (MXPUD). The Small-Scale Comprehensive Future Land Use Map Amendment is requesting a change in Future Land Use from Multi-Family Residential (MF/RES) to Commercial (COMM). These zoning and land use designations align with where these inpatient rehabilitation facilities have previously been approved within the City of Stuart. These applications are being submitted concurrently.

On September 26, 2005, the City Commission approved a rezone petition, via Ordinance No. 2042-05, and established the Villagio Residential Planned Unit Development (RPUD), to allow for the construction of 66-unit multi-family development. On January 9, 2017, the City Commission granted an amendment to the RPUD, via Ordinance No. 2340-2017 establishing the Clarity Pointe RPUD consisting of an 84-bed Assisted Living Facility (ALF) with Memory Care. Additionally, this approval also amended the zoning and land use designations for a 1.92-acre portion of the Clarity Pointe PUD from Residential PUD (RPUD) to Commercial Planned Unit Development (CPUD), and from Multi-Family Residential (MF/RES) to Commercial (COMM). The 1.92 Acre property is **NOT** a part of this application.

As previously stated, it is the intention of the applicant to convert the former 84 bed assisted living facility into an inpatient mental health, drug and alcohol rehabilitation facility with medical detox. No new improvements are being proposed for this site. The zoning designation of Mixed-Use PUD (MXPUD) would align with where these inpatient rehabilitation facilities have been previously approved within the City of Stuart. One such instance was the approval of Dream Center for

Recovery located within the Parks Indian PUD. This site has a Zoning Designation of Mixed-Use PUD (MXPUD) and a Future Land Use of Commercial.

To the north of the subject property lies the right of way of SE Indian street followed by The Crossings multifamily residential development. This parcel has a Future Land Use designation of Multi-Family Residential and lies in the Residential PUD (RPUD) Zoning District.

To the west of the subject property lies a drainage tract approximately 5 acres in size. This lot has a Future Land Use designation of Commercial (COMM) and lies in the Commercial PUD (CPUD) Zoning District.

South of the subject property lies heavily wooded undeveloped land located in the Martin County Jurisdiction. This parcel has a Future Land Use designation of Low Density-up to 5 UPA and lies in the PUD-R (Residential) and Commercial General Zoning Districts.

To the east of the subject property lies the Palmetto Edge commercial plaza. This parcel has a Future Land Use designation of Commercial (COMM) and lies in the Commercial PUD (CPUD) Zoning District.

Concurrency with Adopted Levels-of-Service and Compatibility with Existing Uses

The existing Assisted Living Facility located on site will be converted to the proposed inpatient drug and alcohol rehabilitation facility. As previously stated, no new improvements are being proposed. While the facility's bed count will increase from 84 to 140 beds, the building footprint is not being altered. As such, this facility will remain consistent with the adopted levels of service for utilities and facilities as they are outlined in the Capital Improvements element of the City's Comprehensive Plan. Please find attached a Traffic Analysis demonstrating that the proposed use will generate fewer than twenty (20) peak hour trips.

Compliance with relevant Land Development Code development standards

There is no language in the City of Stuart's Land Development Code outlining where an inpatient rehab facility use is permitted. However, Mixed-Use PUD Zoning designation aligns with zoning designations where such a use has historically been permitted within the City of Stuart. Furthermore, as shown in Sec. 2.01.03. – Table 1. of Stuarts Land Development Code, the Mixed-Use PUD (MXPUD) Zoning district is compatible with a Commercial Future Land Use.

While the use will be changing, the building footprint will not. As such, this application complies with all relevant development standards of the City of Stuart Land Development Code.

Site Plan Components

As stated in Section 11.01.09, a Rezone Map Change must comply with Site Plan Requirements outlined in Appendix C of the Land Development Code. Please find below acknowledgment of each item listed. Responses are in ***bold italics***.

1. Schedule a pre-application meeting
Response: A Pre-Application meeting was held with the City of Stuart on January 25, 2024.
2. Plans shall be 24" x 36" in size (2 sets)- "State Plane Coordinates"

Response: Acknowledged

3. All drawings to be folded to nominal 9" x 12" size

Response: Acknowledged

4. Legible graphic scale displayed on each sheet of both sets

Response: Acknowledged

5. Title Block including: north arrow, street address of the zoning lot, date of preparation, name and address of the firm that prepared the site plan, type of plan, project or development name project (includes any former name if existing)

Response: Acknowledged

6. Site data summary to include but limited to: a) Tabulation of total project area b) Total anticipated phases/units c) Lot coverage of structures d) Number of buildings with square footage e) Impervious/pervious surface coverage f) Density units per acre, if applicable g) No. of off-street parking spaces, required and provided, including handicapped spaces h) No. of off-street loading space(s) i) Existing and proposed zoning j) Future Land Use designation k) Existing and proposed use l) Floor area ratio m) Open space or urban open space, if applicable n) Handicapped access to structures, including type of ramping and slope

Response: Acknowledged. Please find site data summary in included site plan

7. Legal description and parcel boundary(s) survey of the property prepared by a licensed surveyor registered in the State of Florida

Response: Please find attached boundary survey.

8. Vicinity map preferably at a scale of 1' = 2,000'

Response: Acknowledged.

9. Zoning Map, Future Land Use Map, Aerial of subject property

Response: Please find attached Zoning Map, Future Land Use Map, and Aerial Map of Subject Property.

10. All submittals shall be on a CD in PDF downloadable file

Response: Acknowledged. A copy of all materials is included on a USB with this submittal.

11. Final submittal of plan documents shall be signed and sealed in a PDF downloadable file on a disc

Response: No engineering plans are being submitted.

12. All revised plans must be clouded and must be accompanied by a cover letter indicating all changes and their locations (Include it with the application form)

Response: Plans have been updated to show what was previously approved for both the existing Assisted Living Facility and existing commercial outparcel buildings.

13. Access and Traffic Flow Plans including parking, loading and internal traffic circulation patterns (Turning radius trucks)

Response: Parking, loading, and internal traffic circulation patterns are unchanged from what was previously approved on site.

14. Any traffic lights installed by the proposed project will include installation of traffic preemption device as approved by the development director

Response: No traffic lights were installed by the previously approved project.

15. Fire Department Access and Water Supply a) Fire department access road shall extend to within 50 ft of a single exterior door providing access to the interior of the building; b) Fire department access roads shall have an unobstructed width of not less than 20 ft. c) Fire department access roads shall be provided such that any portion of the facility is located not more than 150 ft from the fire dept. access road; d) Required fire lanes shall be provided with the inner edge of the roadway no closer than 10 feet and no further than 30 feet from the building; e) Turning radius (25' inside, 45' outside and height minimum of 13'6") f) Fire Department Connection Location g) Fire Hydrant Locations, existing and proposed - clearance of 7'6" in front of and to the side of the fire hydrant, with a 4' clearance to the rear of the hydrant h) Fire mains - minimum 6" supply; minimum 8" dead end main as approved by Public Works

Response: Access and hydrant locations remain unchanged from what was previously approved by the City of Stuart for this site.

16. Existing buildings and structures on the project zoning lot(s) and within fifty (50) feet of the project's property lines, or such additional distance as may be necessary in order to show major features or conditions that may affect the project

Response: No building lie within fifty (50) feet of the site's property line.

17. Existing Uses and zoning on all adjacent property

Response: Please find existing uses and zoning shown on provided site plan

18. Locations of the nearest available public water supply and wastewater disposal system and the proposed tie-in points, or an explanation of alternative systems to be used

Response: Please find existing water and wastewater on provided site plan.

19. Proposed development shall include but not limited to: a) Location and size of all proposed buildings and structures, labeled with allowable use, height, total and gross floor area, and distance to all property lines and between buildings b) Number, height, and type of residential units; Provide density units per acre (Gross) c) Architectural elevations of all sides of all buildings d) Height and Type of Fencing and Walls, existing and proposed e) Off-Street Parking and Loading layout including typical size and number of spaces by location (parking bays). If structured parking, include parking layout of each level (ground and typical) f) Minimum of six-foot wide sidewalks g) Drive-thru windows, including vehicle queuing or stacking spaces and queuing lane dimensions, if any h) Passenger drop-off/pick-up areas; Decorative benches, if provided

Response: Please find previously approved existing buildings, off-street parking, etc., in included site plan. As no structures are being altered from what was previously approved, architectural elevations are not being provided.

20. Building setback distances from property lines, abutting right-of-way centerlines, and all adjacent buildings and structures

Response: Acknowledged

21. Minimum floor elevations of buildings and finished floor elevations of subject property and adjacent property
Response: No structures are being altered from what was previously approved. As such, no elevations will be provided.
22. Pedestrian Circulation System and Points of Ingress and egress (including proposed public street modifications)
Response: Please find existing pedestrian circulation systems on included site plan.
23. Concurrency Review: a) Demonstrate ability to meet concurrency (Traffic, School, Utility, Parks & Recreation) b) A traffic statement shall be required if proposed development have the potential to generate 19 or less peak-hour trips b) A traffic study shall be required if proposed development have the potential to generate 20 or more new peak-hour trips d) School Concurrency requirement - Residential developments shall comply with bus stops size, location and turning radius to accommodate a school bus by coordinating with the Martin County Zoning, Planning and Engineering Departments, as well as the Martin County School District Planning and Transportation Department.
Response: Please find attached Traffic Analysis.
24. Phasing, if any; Total acreage in each phase and gross/net intensity (non-residential) and gross/net density (residential) of each phase; What will be built in each phase; Construction phase lines
Response: The Clarity Pointe PUD is fully built and no modifications are being proposed at this time.
25. Dumpsters: a) Refuse and recycling collection areas b) Dumpster enclosure details per City of Stuart's standard specification
Response: Please find existing dumpster enclosures on included site plan.
26. Various plans including: a) Site Lighting Plan including location, type, height and intensity pattern of all exterior lights, if applicable b) Signage plan/Unified signage plan c) Landscape plan and specifications, signed/sealed/dated by a Florida Registered Landscape Architect
Response: No plans are being included as exterior lighting and landscaping is not being altered from what was previously approved. Please find attached a Landscape Sufficiency Letter provided by a registered Landscape Architect.
27. Location, names and widths of existing and proposed streets, highways, easements, building lines, alleys, parks, public spaces, and Rights-of-Way and similar facts regarding adjacent property
Response: Please find location, name, and width of existing ROW on included site plan.
28. Utility Lines and Structures such as water, sewer, gas, electric, telephone, hydrants, main size to support fire flows and FDC locations, on the project site, including size and/or capacity and similar facts regarding adjacent property
Response: Please find existing utilities and structures on included site plan.
29. Cross sections and specifications of all proposed pavements

Response: Please find Valley Curb and D Curb details on page 2 of included site plan.

30. Location of proposed retention/detention areas

Response: Please find existing retention/detention areas depicted on included site plan.

31. Typical and special roadway and drainage sections

Response: Please find existing roadway catch basin identified on included site plan.

32. Locations of all land to be abandoned, dedicated or reserved for all public or private uses including rights-of-way, easements, special reservations

Response: As the site is fully developed, no new land will be abandoned, dedicated or reserved for public or private uses.

33. Location of onsite well and any wells within 1,500 feet of any property line

Response: No wells were identified on previously approved plan.

34. PRE-APPLICATION MEETING(S) REQUIRED TO REVIEW POTENTIAL ENVIRONMENTAL IMPACTS Before creating a detailed conceptual site plan or seeking environmental permits from federal, state or other agencies, the applicant shall first schedule and attend at least one pre-application meeting with City Development Department staff to discuss the project's probable environmental impacts. For the pre-application meeting, the applicant shall provide an environmental report, prepared by a qualified environmental professional (i.e., Certified Ecologist, Certified Environmental Professional, Professional Wetland Scientist, or other recognized certification), in accordance with the City's Land Development Code. The applicant is also encouraged to provide a rough layout of the proposed site plan, if available. The primary purpose of the pre-application meeting(s) is to ensure that before detailed site planning begins and substantial costs are incurred, the applicant is made fully aware of the City's environmental design standards, particularly its "avoidance or minimization" of impact standards, and that this awareness is ultimately reflecting in the site's final design.

Response: A Pre-Application Meeting was held with the City of Stuart staff on January 25, 2024. As the site is already fully developed, no environmental impacts were found.

35. Frontage Type(s)

Response: No existing structures are being altered.

36. Minimum percentage of façade along front lot line, indicate amount required and provided

Response: No existing structures are being altered.

37. Location of transition line, if applicable

Response: N/A

38. Minimum percentage of glass, indicate amount required and provided

Response: No existing structures are being altered.

39. Slope of pitched roof, if provided

Response: No existing structures are being altered.

40. Height of parapet wall, if any

Response: No existing structures are being altered.

41. List of exterior materials, colors and finishes

Response: No existing structures are being altered.

42. Except for single-family residential, all developments which are less than 20,000 square feet shall incorporate a minimum of four of the following building design standards, and all developments which exceed 20,001 square feet shall incorporate a minimum of five of the following building treatments: a. Overhangs; b. Arcades as defined by this Code; c. Sculptured artwork and/or fountains; d. Raised cornice parapets over doors; e. Peaked roof forms; f. Display windows; g. Ornamental and structural architectural details, other than cornices, which are integrated into the building structure and overall design; h. Clock or bell towers; i. Decorative light fixtures; j. Decorative landscape planters or planting areas, a minimum of five feet in width, and areas for shaded seating consisting of a minimum of 100 square feet; k. Integration of specialty pavers, or stamped, colored concrete along the building's walkway to constitute a minimum of 60 percent of walkway area; l. Water elements, a minimum of 50 square feet in area; and m. Courtyards along the front building facade.

Response: No existing structures or building treatments are being altered.

43. Curb cut, if any

Response: No additional curb cuts are being proposed.

44. Outbuildings, if any

Response: No outbuildings are being proposed.

45. Height/length/depth/projection of balconies and balcony rails

Response: No existing structures are being altered.

46. Traffic drive aisle width

Response: Please find existing drive isle width on included site plan.

47. Material of roofs and gutters

Response: No existing structures are being altered.

48. Specifications of arcades and porches, if any

Response: No existing structures are being altered.

49. Materials, configuration, and operations of windows and doors

Response: No existing structures are being altered.

50. Garden wall, if any

Response: No garden walls are shown on the included site plan.

Based on the above justification and attached information, the Petitioner respectfully requests approval of this request.

Z:\EDC-2023\23-378 - Ackner - 500 SE Indian Street\ENGINEERING\Documents\Submittal Documents\Justification Statement\2024-02-06_Ackner - 500 SE Indian St Rezoning Narrative.docx



City of Stuart
121 SW Flagler Ave.
Stuart, FL 34994
development@ci.stuart.fl.us
(772) 288-5326

Received by: _____

Reviewed by: _____

Rezone Real Property Application

(including Planned Unit Developments)

Project ID# _____
(Staff Entry)

Pre-App Conference Date: January 25, 2024	Application Date: December 18, 2023
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SITE INFORMATION

Project Name: Ackner - 500 SE Indian St	Parcel ID#: 40-38-41-010-000-00010-0 / 40-38-41-010-000-00001-0
Site Address: 500 SE Indian St, Stuart, FL 34994	
Subdivision: Plat of Clarity Pointe PLAT 17/68	Lot(s): Lot 1, Lake Tract, Upland Preserve Tract, Access Tract PLAT 17/68
Site Area/Acreage: 9.46 Acres	Flood Zone/Base Flood Elevation: Flood Zone X
Existing Zoning District / CRA Subdistrict: RPUD: Residential PUD	
Proposed Zoning District / CRA Subdistrict: MXPUD: Mixed-Use PUD	
PUD Rezoning (Check the box below that applies):	
Rezoning to CPUD: ☐	Rezoning to UPUD: ☐
Rezoning to RPUD: ☐	Rezoning to UPUD <5 Bungalow Units: ☐
Rezoning to MXPUD: ☒	Rezoning to Public Service PSPUD: ☐
Rezoning to Industrial IPUD: ☐	Rezoning to Non-PUD District Rezoning: ☐
Current Comprehensive Plan Future Land Use Designation: Multi-Family Residential	
Proposed Comprehensive Plan Future Land Use Designation (if applicable): Commercial	
Existing Land Use: Assisted Living Facility (ALF)	Proposed Land Use: Inpatient mental health, drug and alcohol rehab with medical detox
Proposed Square Footage (if applicable):	Proposed Density (if applicable):

PETITIONER INFORMATION

Property Owner: CP - Stuart Development I, LLC	Phone Number / Email Address: (850)-830-7425 rick@olsonlandpartners.com
Property Owner's Mailing Address: 4300 Legendary Drive, Suite 234, Destin FL 32541	
Applicant (if not Owner): Perseverance Recovery Center, LLC	Phone Number / Email Address: (561)-815-4478 Jason.Ackner@Phoenix-bhc.com
Applicant's Mailing Address: 318 S US Highway 1, Suite 200, Jupiter, FL 33477	
Agent/Contact Person: Connor Kennedy, EDC	Phone Number / Email Address: (772)-462-2455 connorkennedy@edc-inc.com
Agent's Mailing Address: 10250 SW Village Parkway, Suite 201, Port St. Lucie, FL 34987	
Architect:	Engineer:
Planner: Same as Agent	Landscape Architect: Jeffrey W. Smith

City of Stuart Development Department, 121 SW Flagler Ave. Stuart, FL 34994 Phone: (772) 288-5326 Fax: (772) 288-5388

Statement of Ownership and Designation of Authorized Agent

(Please Print or Type)

Before me, the undersigned authority, personally appeared _____

Who, being by me first duly sworn, on oath deposed and says:

1. That he/she is the fee simple title owner of the property described in the attached Legal Description.
2. That he/she is requesting approval of a _____ in the City of Stuart, FL.
3. That he/she has appointed _____ to act as an authorized agent on his/her behalf to accomplish the above project.

**Please See Attached Agent
Consent Forms**

Signature of Owner: _____

By: _____ Name/Title

Street Address _____

City, State, Zip Code _____

P.O. Box _____

City, State, Zip Code _____

Telephone Number _____

Fax Number _____

Email Address: _____

STATE OF FLORIDA, COUNTY OF _____

Sworn and subscribed before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, _____ By _____.

Personally Known OR Produced Identification
Type of Identification Produced: _____

Notary Public

My Commission expires:

Financial Responsibility Form

(Please Print or Type)

The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name: <u>Jason Aekner</u>	City/State/Zip Code: <u>Jupiter, FL 33477</u>
Title: <u>CEO</u>	Telephone Number: <u>561-845-4478</u>
Company: <u>Perseverance Recovery Center, LLC</u>	Facsimile Number:
Company Address: <u>318 S. US Highway 1 Ste. 200</u>	Email Address (optional): <u>Jason.Aekner@Phoenix-BHCC.com</u>

I hereby certify that all information contained herein is true and correct.

1. Signed this 7th day of February, 2024



Signature of Property Owner, Lessee, Contract Purchaser or Applicant (circle one)

Application Requirements

Fees (check box): This does not include fees that may be charged as a result of application review by the City's consultants or any required recording fees.

Rezoning to CPUD	\$3,638.00	☐	Rezoning to UPUD	\$3,638.00	☐
Rezoning to RPUD	\$3,638.00	☐	Rezoning to UPUD < 5 Bungalow Units	\$1,523.00	☐
Rezoning to MXPUD	\$3,638.00	☒	Rezoning to Public Service PSPUD	\$3,638.00	☐
Rezoning to Industrial IPUD	\$3,638.00	☐	Non-PUD District Rezoning	\$1,065.00	☐

Submittal Requirements: A completed application form, the payment of fees, one (1) copy of all documents on a PDF formatted disc electronically signed and sealed, and a site plan. (Note: A concept plan may, at the discretion of the applicant, be submitted instead of a site plan. However, in doing so the applicant acknowledges that a site plan will need to be submitted for City Commission approval prior to making application for a development permit.) The data requirements for a site plan and a concept plan are available at the Development Department.

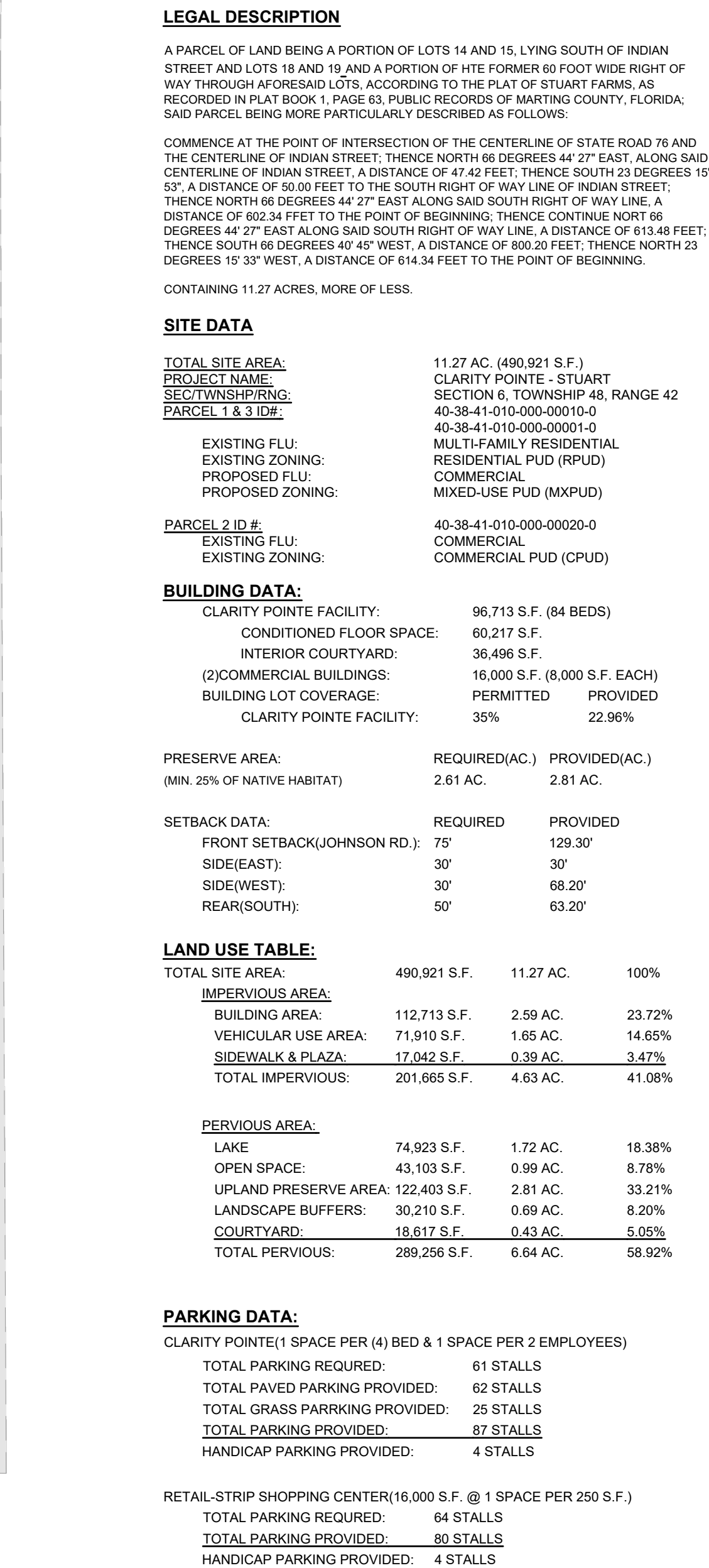
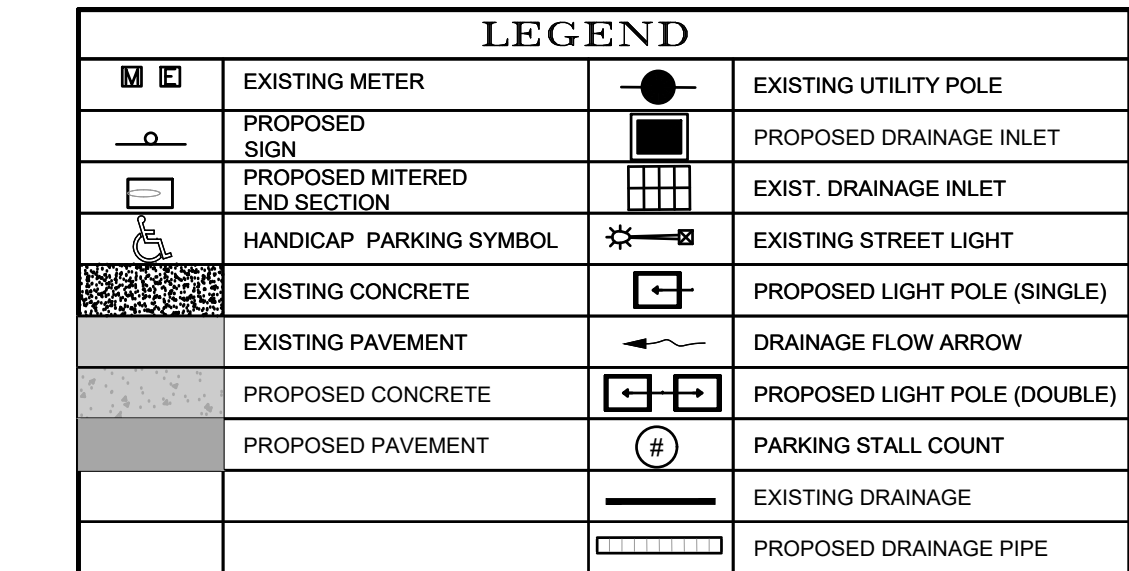
Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application. The Local Planning Agency (LPA) is required to hold an advertised public hearing and formulate a recommendation to the City Commission. The City Commission is also required to hold an advertised public hearing after which it may approve, approve with conditions, or deny the application.

Written justification supporting the application and demonstrating how the application:

- Is consistent with the relevant components of the City of Stuart Comprehensive Plan including concurrency with adopted levels-of-service for utilities/facilities and compatibility with existing/planned uses and
- Complies with the relevant development standards of the City of Stuart Land Development Code *(include additional pages if needed)*.

Please find demonstration of consistency with relevant components of City of Stuart Comprehensive Plan and Development Standards in the Project Narrative included with this application.

(over)

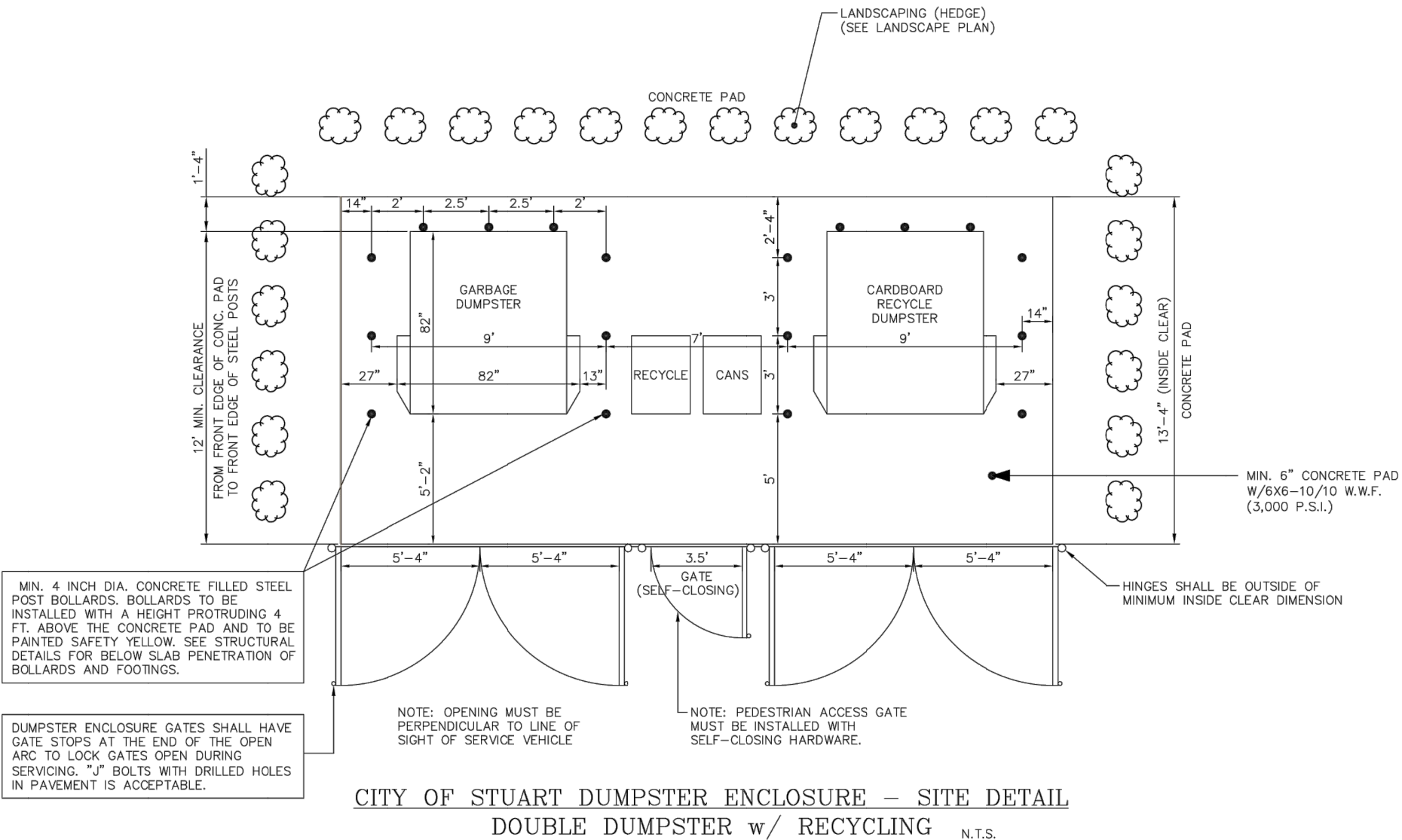


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THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADOPTION BY EDC, INC. SHALL BE WITHOUT LIABILITY TO EDC, INC.

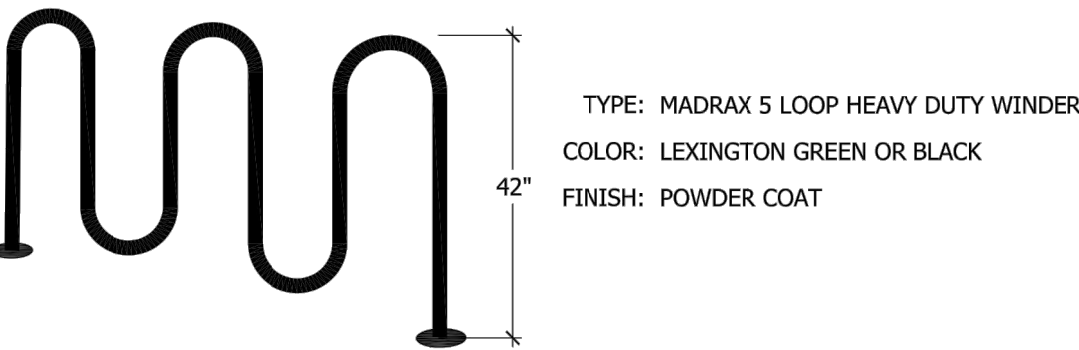
DUMPSTER DETAIL

NTS



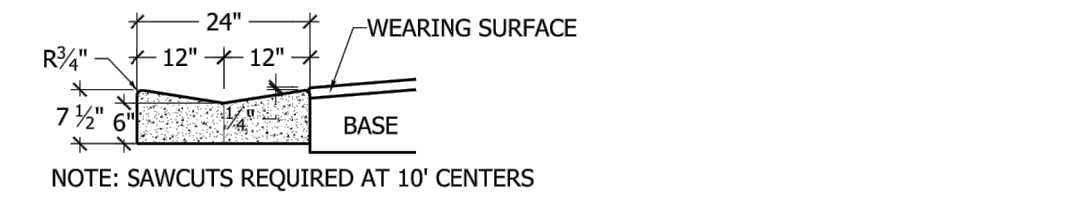
BIKE RACK DETAIL

NTS



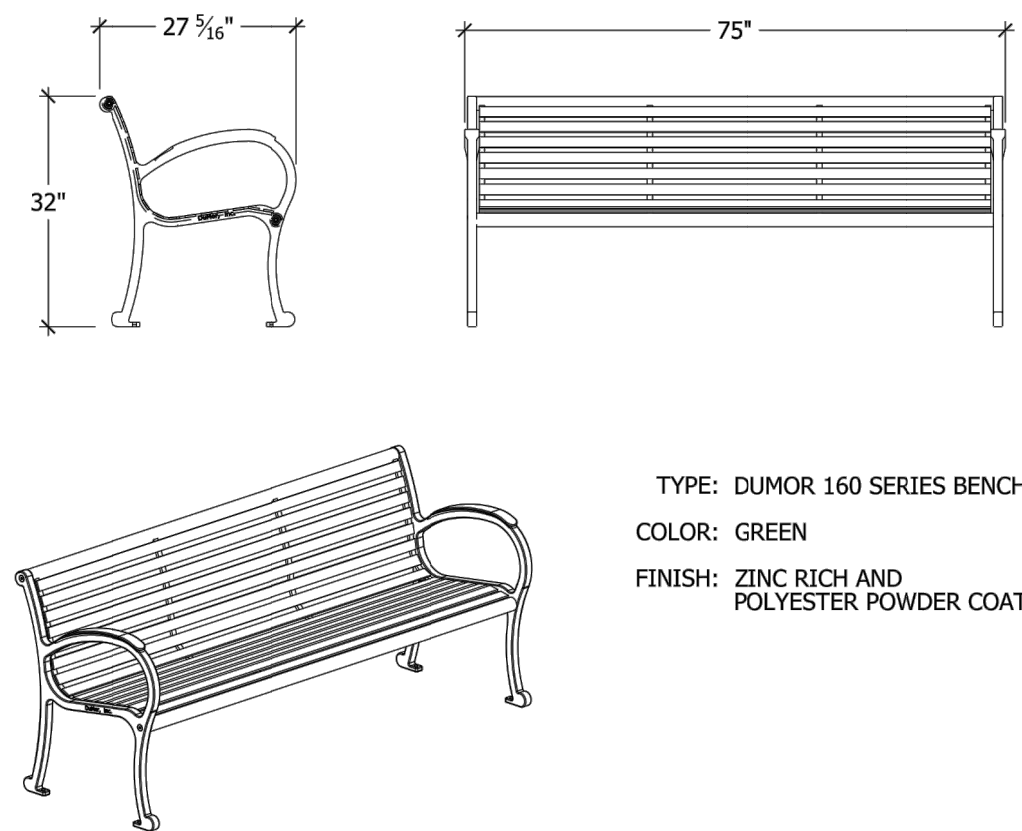
VALLEY CURB DETAIL

NTS



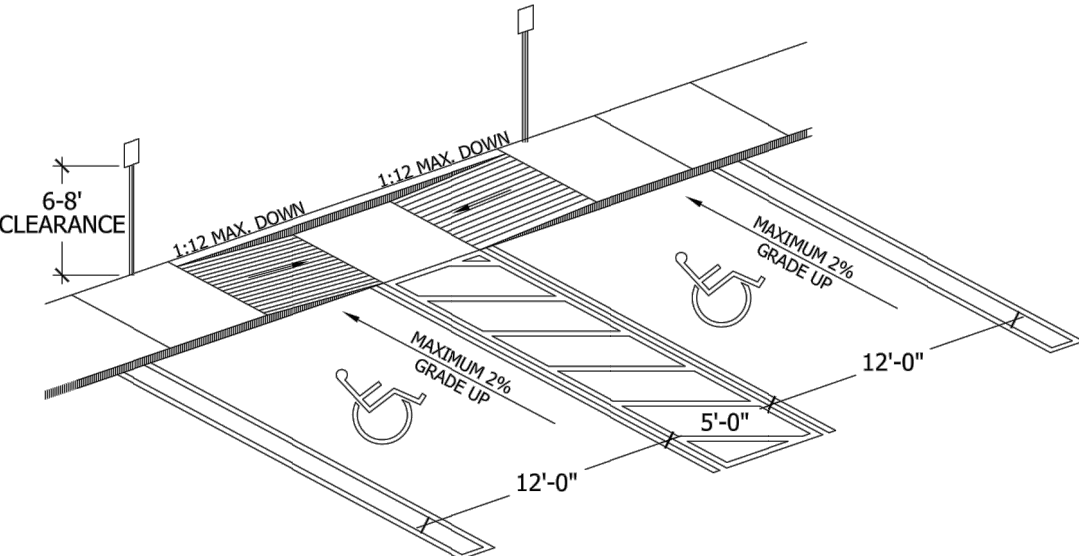
BENCH DETAIL

NTS



HANDICAP RAMP DETAIL

NTS



NOTE: IN THIS APPLICATION RAMPS CAN BE SEPARATED AND SIDEWALK CAN BE FLUSH ACROSS ALL HC SPACES

NOTE: HCR#3-MOD MEANS ONLY 1 RAMP BUILT TO REQUIRED SIDE OF SIDEWALK. OR RAMPS SEP. TO ENDS OF HC SPACES

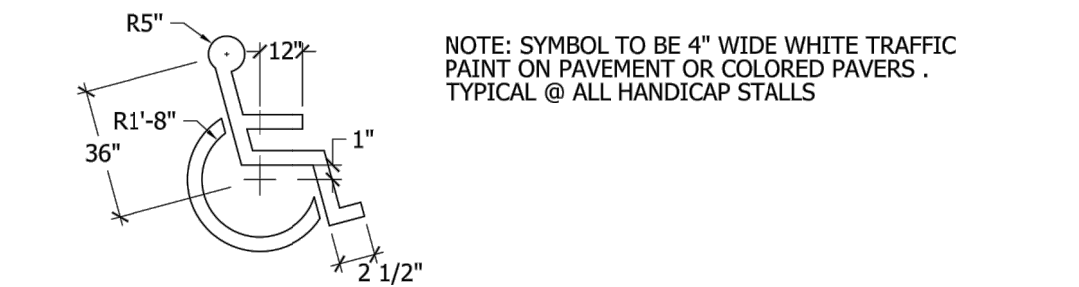
D CURB DETAIL

NTS



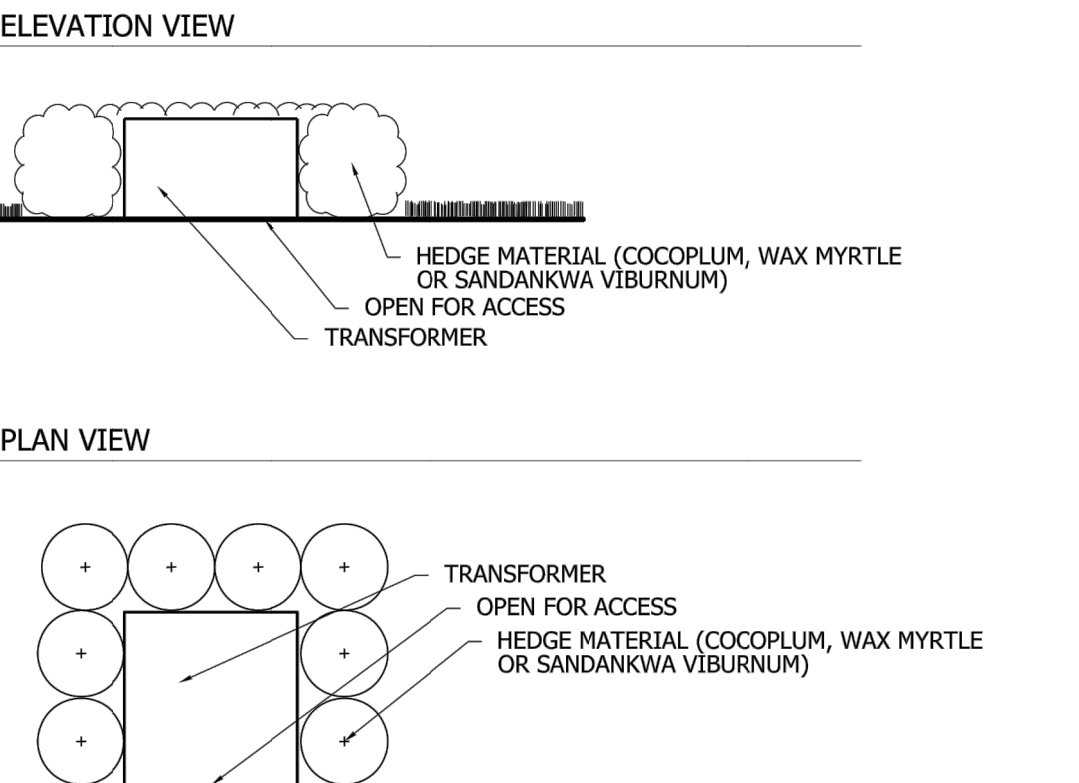
HANDICAP SYMBOL DETAIL

NTS



TRANSFORMER DETAIL

NTS



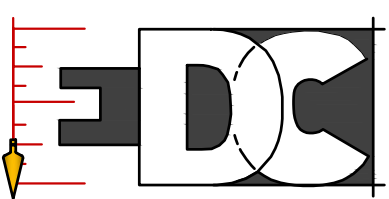
10250 VILLAGE PARKWAY
SUITE 201
PORT ST. LUCIE, FL 34987
772-462-2455
www.edc-inc.com

F.B.P.E. CERTIFICATE OF AUTHORIZATION 8935
L.B. CERTIFICATE OF AUTHORIZATION 8098

DESIGNED BY
VER
DRAWN BY
FILE NAME
SITE PLAN DETAILS
LAYOUT
AS SHOWN
SCALE
30.JAN.24
DATE

REVISION COMMENTS
X
DATE

CLARITY POINTE
SITE PLAN DETAILS
STUART
FLORIDA



10250 SW VILLAGE PARKWAY - SUITE 201
PORT SAINT LUCIE, FL 34987
772-462-2455

23-378

2 OF 2

Site Details

Connor Kennedy
Planner I Planning Division
Engineering Design & Construction, Inc.
10250 SW Village Parkway - Suite 201
Port Saint Lucie, Florida 34987

Re: Ackner - 500 SE Indian St (Stuart)
TRAFFIC STATEMENT
Parcel ID: 40-38-41-010-000-00010-0

Dear Connor,

JFO Group Inc. has been retained to prepare a traffic impact analysis to determine compliance with Sec. 4.05. of the City of Stuart Land Development Code. This traffic statement is associated with a Rezoning and a Future Land Use amendment application to convert an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility.

The site is located south of Indian Street, $\pm$ 0.15 miles northeast of Kanner Highway in the City of Stuart, Florida. Figure 1 shows the project location in relation to the transportation network. Parcel ID associated with this project is 40-38-41-010-000-00010-0. A copy of the property appraiser information for the site is included as Exhibit 1.

Exhibit 2 includes a copy of the latest approved site plan. Exhibit 3 includes a copy of Ordinance 2340-2017 which approved the 84-bed assisted living facility as it is built today.



Figure 1 : Project Location

Project trip generation rates were based on the *Institute of Transportation Engineering (ITE) Trip Generation Manual 11th Edition*. When fitted curve equations were not available, weighted average rates were used. Similarly, when data plots had at least 20 data points and a fitted curve equation with an R² of at least 0.75, fitted curve equations were used. Table 1 shows the rates used in order to determine the trip generation for Daily, AM, and PM peak hour conditions while Table 2 summarizes the net Daily, AM, and PM peak trips potentially generated by the existing and proposed development. Exhibit 4 includes excerpts from the ITE trip generation manual for ITE Land Use Code 254.

Table 1: Trip Generation Rates

Land Use	ITE Code	Daily Trip Gen.	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Assisted Living	254	2.60	60%	40%	0.18	39%	61%	0.24

According to Table 2, the net Daily, AM and PM peak trips potentially generated due to the proposed changes are 146, 10 (6 In/4 Out) and 14 (5 In/9 Out) trips respectively. Therefore, according to Table 2, the proposed changes to the 500 SE Indian St property will generate less than 20 peak hour trips.

There are 70 bedrooms at the existing facility that currently accommodates 84 beds. Given the proposed use on the subject site, a maximum of two (2) beds could be accomodated per bedroom. Therefore, in order to prepare a conservative analysis, it was assumed that a maximum of 140 beds could be operating on the subject site. Similarly, since ITE does not include trip generation rates for mental/drug rehab facilities and as part of a conservative analysis, it was assumed that for trip generation purposes the proposed facility will operate similarly to an assisted living facility.

Table 2: Trip Generation

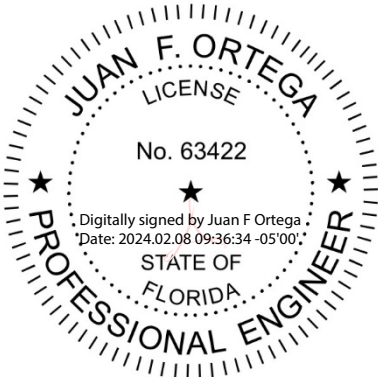
Land Use	Intensity	Daily Traffic	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
EXISTING DEVELOPMENT								
Assisted Living	84 Beds	218	9	6	15	8	12	20
Net Existing Traffic		218	9	6	15	8	12	20
PROPOSED DEVELOPMENT								
Mental/Drug Rehab	140 Beds	364	15	10	25	13	21	34
Net Proposed Traffic		364	15	10	25	13	21	34
Net Traffic		146	6	4	10	5	9	14

The proposed changes to the 500 SE Indian St property have been evaluated following Sec. 4.05. of the City of Stuart Land Development Code. This analysis shows that the proposed request to convert an existing 84-bed assisted living facility with memory care into an inpatient mental health and drug rehab facility will generate less than 20 peak hour trips. Therefore, the proposed project does not require a traffic study where a maximum of 146 daily trips could be potentially generated.

This analysis shows that the proposed Future Land Use and Zoning changes necessary to allow interior renovations to the 500 SE Indian St property to accommodate the proposed inpatient mental health and drug rehab facility will be in compliance with Sec. 4.05. of the City of Stuart Land Development Code. Project build-out is expected in 2025.

Sincerely,

JFO GROUP INC
COA Number 32276



- Enclosures:
- Exhibit 1: Property Appraiser Information

Exhibit 2: Approved Site Plan

Exhibit 3: Ordinance 2340-2017

Exhibit 4: ITE Trip Generation Rates

This item has been electronically signed and sealed by Dr. Juan F. Ortega, PE on February 8, 2024 using a Digital Signature. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.



Basic Info

PIN 40-38-41-010-000-00010-0	AIN 1118645	Situs Address 500 SE INDIAN ST STUART FL	Website Updated 1/25/24
--	-----------------------	--	-----------------------------------

General Information

CHANGE MAILING ADDRESS

SIGN UP FOR PROPERTY FRAUD ALERT

Property Owners

CP STUART DEVELOPMENT I
LLC

Parcel ID

40-38-41-010-000-00010-0

Use Code/Property Class

7400 - 7400 Homes for the
aged

Mailing Address

4300 LEGENDARY DR #234
DESTIN FL 32541

Account Number

1118645

Neighborhood

M3 M3-CENTRAL STUART

Tax District

STUART

Property Address

500 SE INDIAN ST STUART FL

Legal Acres

4.67

Legal Description

LOT 1 CLARITY POINTE ACCORDING TO THE
PL...

Ag Use Size (Acre\Sq Ft)

N/A

Current Value

Year	Land Value	Improvement Value	Market Value	Value Not Taxed	Assessed Value	Total County Exemptions	County Taxable Value
2023	\$ 1,258,190	\$ 10,490,110	\$ 11,748,300	\$ 0	\$ 11,748,300	\$ 0	\$ 11,748,300

Market values shown on the website reflect market conditions as of January 1st, the statutory assessment date. We are prohibited by law from relying on sales that occur after the January 1 assessment date. Therefore, market values shown on the website do not reflect today's market conditions, but rather the market conditions last year. In addition, the statutes require the county Property Appraiser to deduct for typical costs of sale (which include expenses such as commissions, title insurance, appraisals, inspection fees, etc.) when arriving at market value for tax purposes. That is why the market value for tax purposes is different from what a property would sell for today.

Current Sale

Sale Date N/A	Grantor (Seller) N/A	Doc Num N/A
Sale Price N/A	Deed Type N/A	Book & Page N/A

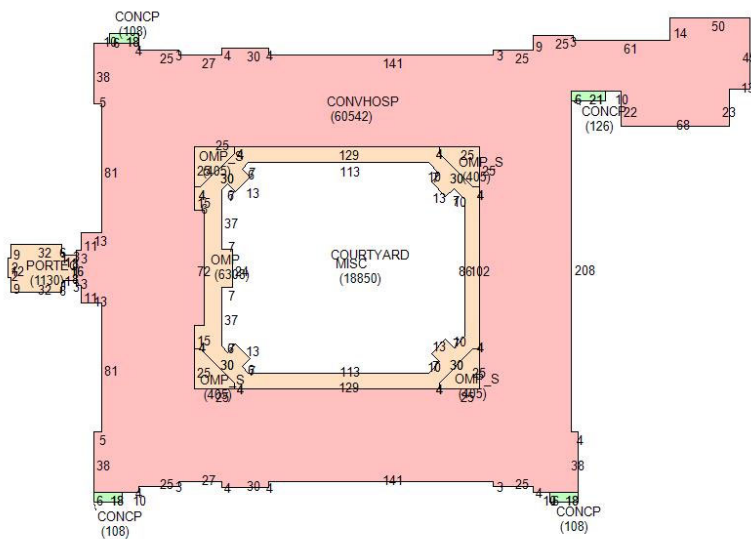
Improvements

PIN	AIN	Situs Address	Website Updated
40-38-41-010-000-00010-0	1118645	500 SE INDIAN ST STUART FL	1/25/24

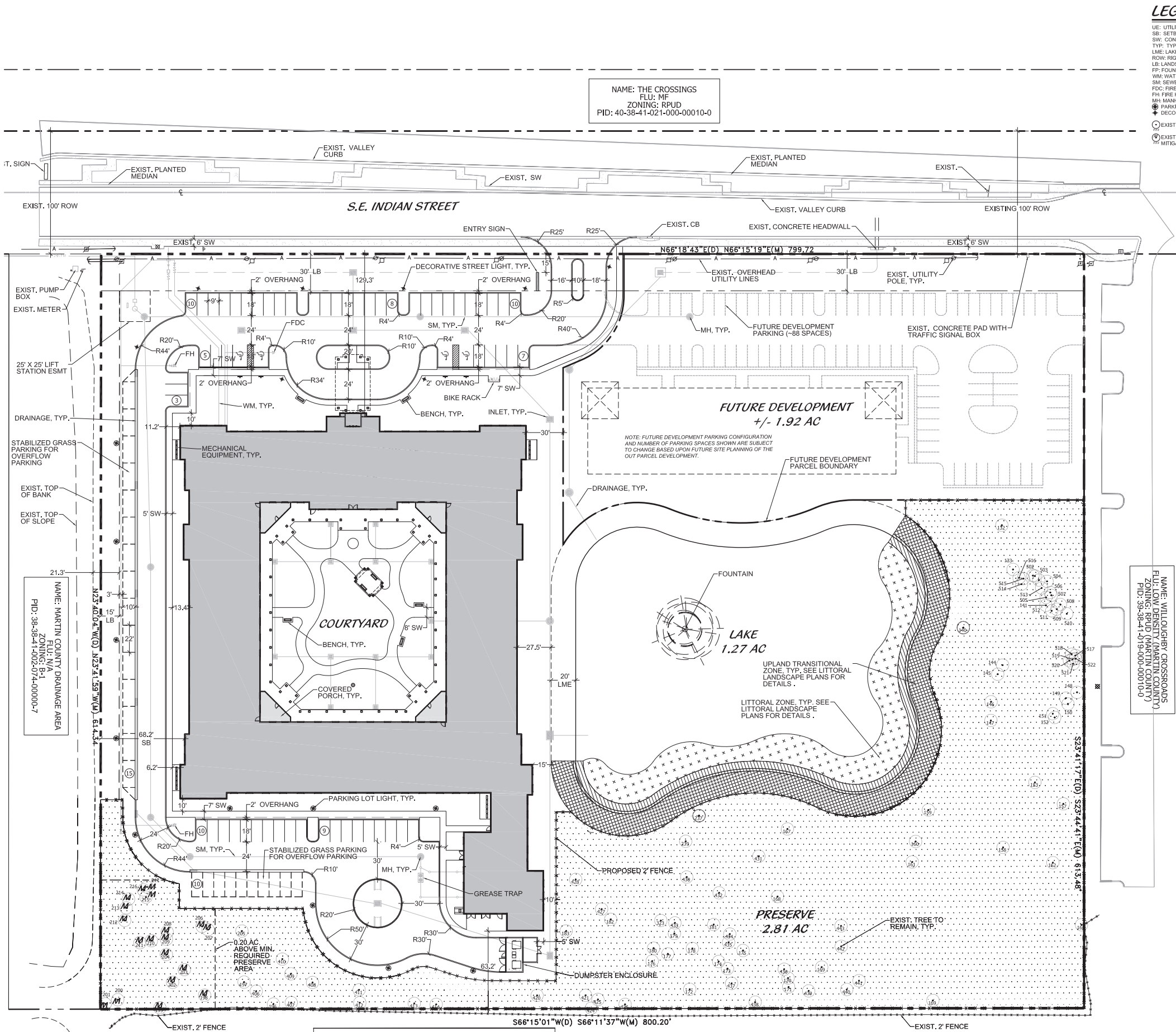
Use Code/Property Class	Total Finished Area	Max Stories
7400 - 7400 Homes for the aged	60,542 SF	1

Building Information (1 of 1)

Building Type	Finished Area	Exterior Cover	Roof Cover
Convalescent Hospital	60,542 SF	Stud -Hardboard Siding	Com Shingle
Year Built	Wall	Number of Units	Wall Height
2018	Class C - Fire Resistant	100	10
Bedrooms	Full Baths	Half Baths	
N/A	64	20	



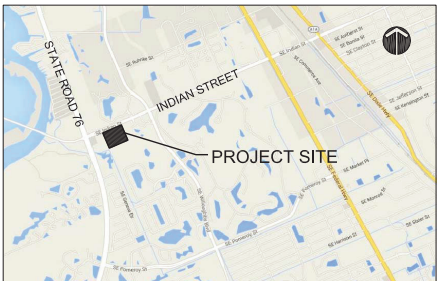
Report a
Discrepancy



LEGEND

- UE: UTILITY EASEMENT
- SB: SETBACK
- SW: CONCRETE SIDEWALK
- TYP: TYPICAL
- LME: LAKE MAINTENANCE EASEMENT
- ROW: RIGHT-OF-WAY
- LB: LANDSCAPE BUFFER
- FP: FOUNDATION PLANTING AREA
- WM: WATER MAIN
- SM: SEWER MAIN
- FDC: FIRE DEPARTMENT CONNECTION
- FH: FIRE HYDRANT
- MH: MANHOLE
- PARKING LOT LIGHT
- DECORATIVE STREET LIGHT
- EXISTING TREE TO REMAIN
- EXISTING TREE TO COUNT FOR MITIGATION CREDITS

LOCATION MAP



SITE DATA

SECTION 6, TOWNSHIP 48, RANGE 42	CLARITY POINTE- STUART		
NAME OF PROJECT	48-42-0601-0432		
PROPERTY CONTROL NUMBERS	OFFICE PARK (OP)		
CURRENT FUTURE LAND USE	RESIDENTIAL PUD (RPUD)		
CURRENT ZONING			
TOTAL SITE AREA	11.27	AC	490,921 SF
NET SITE AREA	8.46	AC	368,517 SF
STORMWATER (15% NET SITE)	1.27	AC	55,331 SF
MEMORY CARE FACILITY	5.27	AC	229,536 SF
FUTURE DEVELOPMENT	1.92	AC	83,650 SF
BUILDING DATA			
CLARITY POINTE FACILITY	96,713	SF	84 BEDS
CONDITIONED FLOOR SPACE	60,217	SF	
INTERIOR COURTYARD	36,496	SF	
BUILDING LOT COVERAGE	PERMITTED	PROVIDED	
(EXCLUDING FUTURE DEVELOPMENT PARCEL)			
CLARITY POINTE FACILITY	35%	26.24%	
PRESERVE AREA	REQUIRED (AC)	PROVIDED (AC)	
(MIN. 25% OF NATIVE HABITAT)	2.61	2.81	
SETBACK DATA	REQUIRED	PROVIDED	
FRONT SETBACK (JOHNSON ROAD)	75	129.30'	
SIDE (EAST)	30	30'	
SIDE (WEST)	30	68.20'	
REAR (SOUTH)	50	63.20'	
SURFACE COVER			
(EXCLUDING FUTURE DEVELOPMENT PARCEL)			
IMPERVIOUS AREA	SF	AC	%
BUILDING LOT COVERAGE	96,713	2.22	26.24%
VEHICULAR USE AREA	49,413	1.13	13.41%
SIDEWALK & PLAZA	7,509	0.17	2.04%
TOTAL IMPERVIOUS	153,635	3.53	41.69%
PERVIOUS AREA			
OPEN SPACE	43,652	1.00	11.85%
PRESERVE AREA	122,403	2.81	33.21%
LANDSCAPE BUFFERS	30,210	0.69	8.20%
COURTYARD	18,617	0.43	5.05%
TOTAL PERVIOUS	214,882	4.51	58.31%
TOTAL	368,517	8.03	100.00%
PARKING DATA	REQUIRED	PROVIDED	
EMPLOYEE & GUEST PARKING	61	62	
PAVED		62	
GRASS		25	
HANDICAP SPACES (INCLUDED IN TOTAL)	3	4	
TOTAL	61	87	

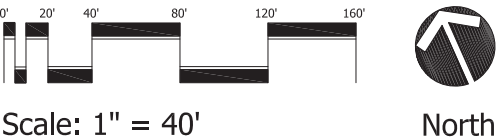
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOTS 14 AND 15, LYING SOUTH OF INDIAN STREET AND LOTS 18 AND 19 AND A PORTION OF THE FORMER 60 FEET WIDE ROAD RIGHT-OF-WAY THROUGH AFORESAID LOTS ACCORDING TO THE PLAT OF STUART FARMS, AS RECORDED IN PLAT BOOK 1, PAGE 63, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE POINT OF INTERSECTION OF THE CENTERLINE OF STATE ROAD 76 AND THE CENTERLINE OF INDIAN STREET; THENCE NORTH 66°18'43" EAST, ALONG SAID CENTERLINE OF INDIAN STREET, A DISTANCE OF 47.42 FEET; THENCE SOUTH 23°41'17" EAST, A DISTANCE OF 50.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF INDIAN STREET; THENCE NORTH 66°18'43" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 602.34 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 66°18'43" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 799.73 FEET; THENCE SOUTH 23°41'17" EAST DEPARTING SAID SOUTH RIGHT-OF-WAY, A DISTANCE OF 813.48 FEET; THENCE SOUTH 66°15'01" WEST, A DISTANCE OF 799.95 FEET; THENCE NORTH 23°40'04" WEST, A DISTANCE OF 614.34 FEET TO THE POINT OF BEGINNING.

CONTAINING 11.27 ACRES, MORE OR LESS.

SITE PLAN



Cotleur & Hearing

Landscape Architects
Land Planners
Environmental Consultants
1934 Commerce Lane
Suite 1
Jupiter, Florida 33458
561.747.6336 • Fax 747.1377
www.cotleurhearing.com
Lic# LC-C000239

CLARITY POINTE
Stuart, Florida

DESIGNED	DMS
DRAWN	MCR
APPROVED	DEH
JOB NUMBER	15-0206.07
DATE	08-28-16
REVISIONS	10-25-16

October 25, 2016 8:25:58 a.m.
Drawing: 150206.07 SP.DWG

SHEET 1 OF 2

© COTLEUR & HEARING, INC.
These drawings are the property of the architect and are not to be used for reproduction or other projects except by agreement in writing with the architect. Immediately report any discrepancies to the architect.

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BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2340-2017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE RPUD KNOWN AS "VILLAGIO STUART", CONSISTING OF 11.27 ACRES, OWNED BY TREASURE COAST PROPERTIES, LLC, AND APPLIED FOR BY CP-STUART DEVELOPMENT LLC, LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET APPROXIMATELY 580 FEET EAST OF THE INTERSECTION OF SE KANNER HIGHWAY AND SE INDIAN STREET, SAID PROPERTY BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; FURTHER REPEALING ORDINANCE NUMBER 2042-05, AND ESTABLISHING THE CLARITY POINTE RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) CONSISTING OF AN **84 BED ASSISTED LIVING FACILITY WITH MEMORY CARE**; AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN, THEREBY CHANGING THE FUTURE LAND USE DESIGNATION FROM "MULTI-FAMILY RESIDENTIAL" TO "COMMERCIAL" FOR A 1.92 ACRE PORTION OF SAID PROPERTY; PROVIDING THAT SAID PROPERTY SHALL CONCURRENTLY REZONED FROM "RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD)" TO "COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD)" ON THE CITY'S OFFICIAL ZONING MAP; APPROVING A MASTER DEVELOPMENT PLAN FOR THE OVERALL CLARITY POINTE PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR DEVELOPMENT CONDITIONS; A TIMETABLE FOR DEVELOPMENT, DECLARING THE PLAN TO BE CONSISTENT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

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Land Use: 254

Assisted Living

Description

An assisted living complex is a residential setting that provides either routine general protective oversight or assistance with activities necessary for independent living to persons with mental or physical limitations. The typical resident has difficulty managing in an independent living arrangement but does not require nursing home care. Its centralized services typically include dining, housekeeping, social and physical activities, medication administration, and communal transportation.

The complex commonly provides separate living quarters for each resident. Alzheimer's and ALS care are commonly offered at an assisted living facility. Living quarters for these patients may be located separately from the other residents.

Assisted care commonly bridges the gap between independent living and a nursing home. In some areas of the country, an assisted living residence may be called personal care, residential care, or domiciliary care. Staff may be available at an assisted care facility 24 hours a day, but skilled medical care—which is limited in nature—is not required. Congregate care facility (Land Use 253), continuing care retirement community (Land Use 255), and nursing home (Land Use 620) are related uses.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (<https://www.ite.org/technical-resources/topics/trip-and-parking-generation/>).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Connecticut, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Texas, and Utah.

Source Numbers

244, 573, 581, 611, 725, 876, 877, 912, 1016, 1029

Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 2

Avg. Num. of Beds: 135

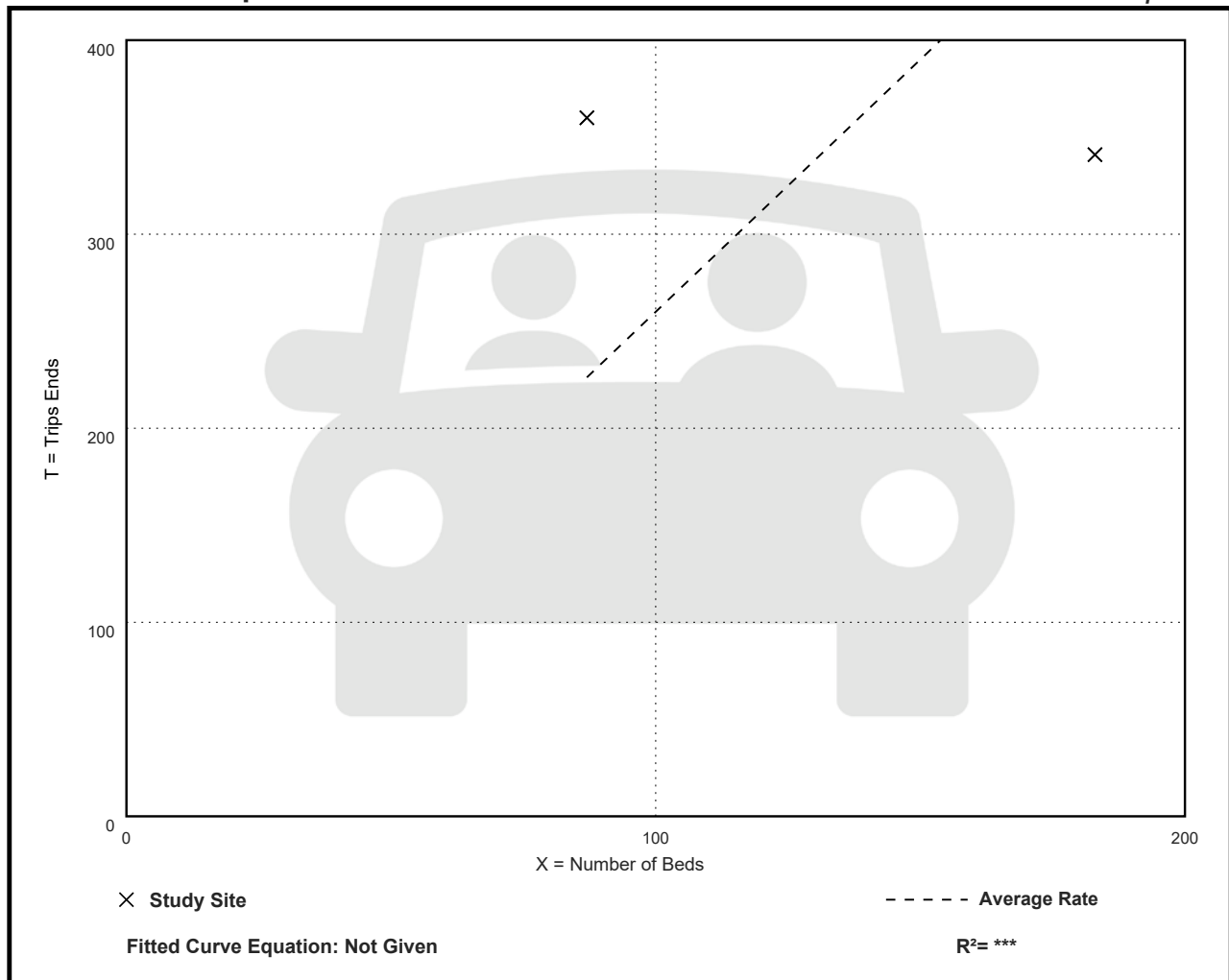
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
2.60	1.86 - 4.14	***

Data Plot and Equation

Caution – Small Sample Size



Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 14

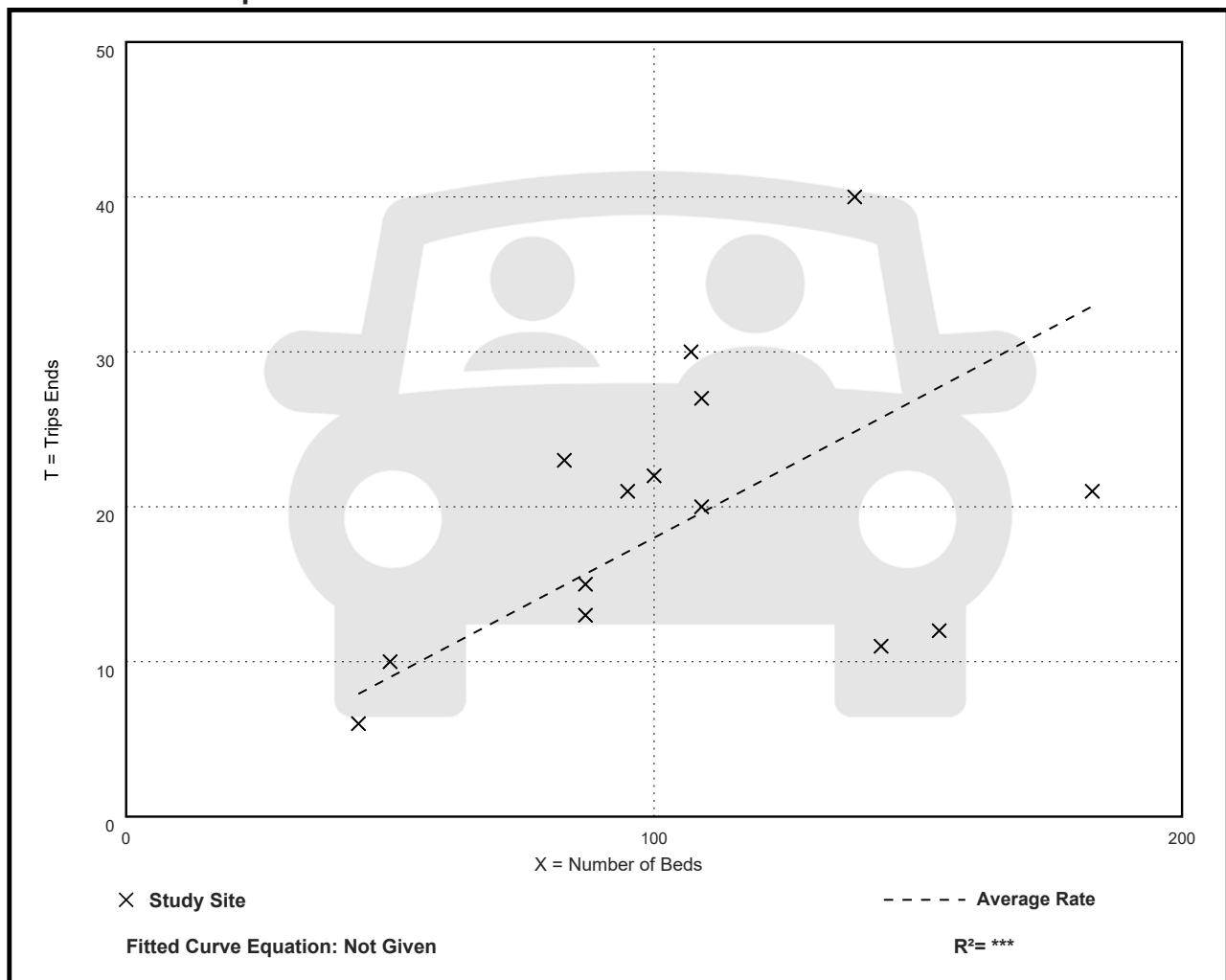
Avg. Num. of Beds: 106

Directional Distribution: 60% entering, 40% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
0.18	0.08 - 0.29	0.08

Data Plot and Equation



Assisted Living (254)

Vehicle Trip Ends vs: Beds

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 14

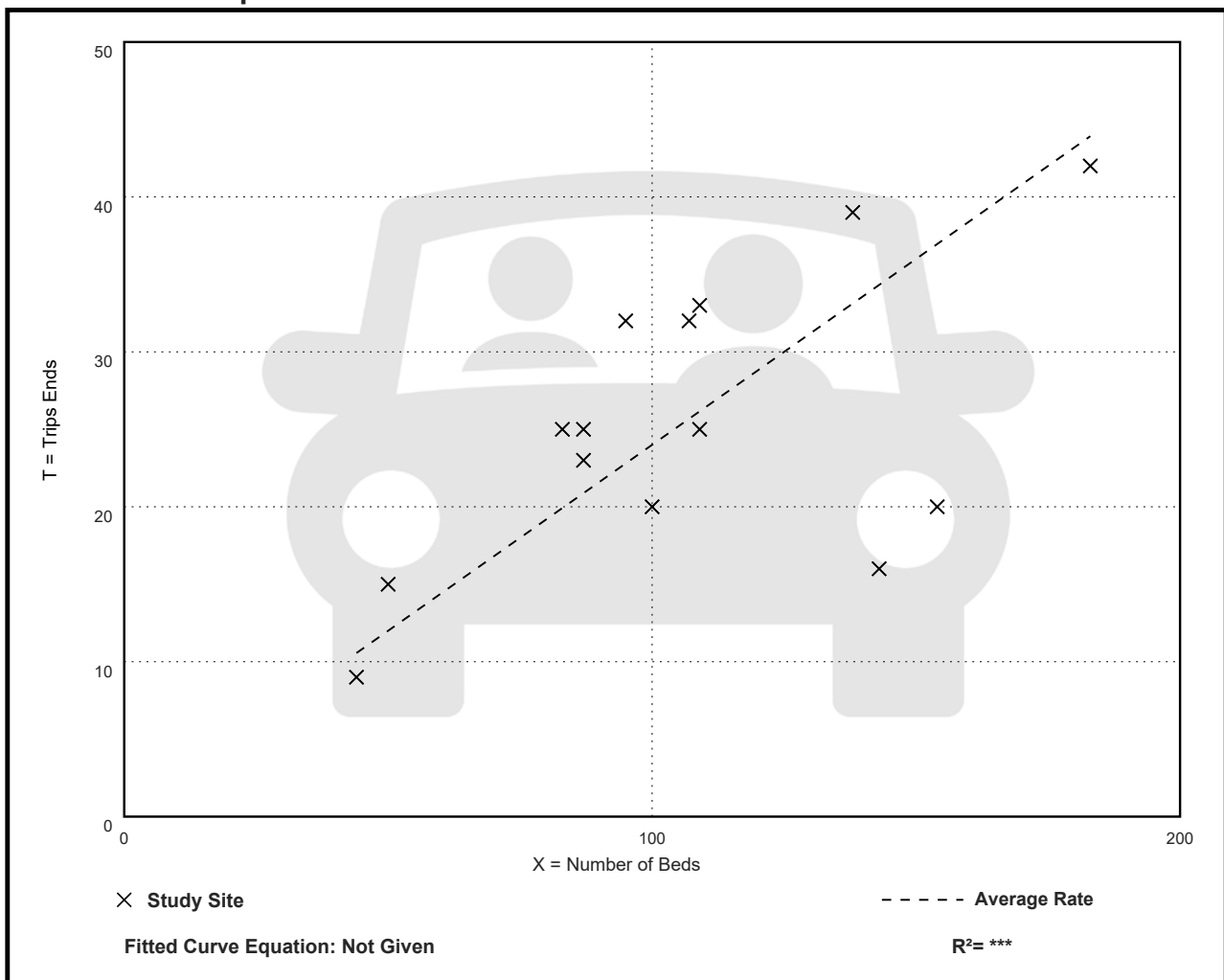
Avg. Num. of Beds: 106

Directional Distribution: 39% entering, 61% exiting

Vehicle Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
0.24	0.11 - 0.34	0.07

Data Plot and Equation





To: Jodi Nentwick-Kugler
Director of Development
City of Stuart Development Department

From: Alex Memering, P.E.
Kimley-Horn and Associates, Inc.

ARM

Alex Campano, E.I.
Kimley-Horn and Associates, Inc.

ADC

Date: March 27, 2024

Re: **Clarity Pointe**
Final Review of Traffic Impact Analysis

Kimley-Horn has reviewed the Traffic Statement (dated February 8, 2024) prepared by JFO GROUP INC. related to the above-mentioned project. The subject project is generally located south of SE Indian Street, west of S Kanner Highway in the City of Stuart, Florida.

The traffic statement evaluated the trip generation of the existing site relative to the proposed use. The existing site currently operates as an assisted living facility, which is consistent with the previously approved traffic study. A mental health / rehab facility is proposed, which is similar to the existing use, with a maximum increase from the existing 86 beds to 140 beds.

The proposed increase to a maximum of 140 beds has the potential to generate a net increase of 146 daily, 10 (6 entering, 4 exiting) AM peak hour, and 14 (5 entering, 9 exiting) PM peak hour trips. Based on the net change in peak hour trips (< 20) a traffic study isn't required per the City of Stuart Land Development Code Section 4.04.05.

It should be noted that the change in Future Land Use (FLU) and zoning designations do not increase traffic volumes as the proposed FLU and zoning designations provide the same intensities as the existing FLU and zoning designations per the City of Stuart Comprehensive Plan and Land Development Code. We have no further comments at this time.

Thank you for the opportunity to assist the City of Stuart in reviewing the noted project. Please contact us if you have any questions or need additional information.

Conceptual Design Group, Inc.

Landscape Architecture – Site Planning

Ms. Jodi Nentwick-Kugler
Director of Development
City of Stuart
121 S.W. Flagler Avenue
Stuart, Florida 34994
772-288-5328

February 7, 2024

Re: 500 SE Indian Street
40-38-41-010-000-00010-0 &
40-38-41-010-000-00001-0

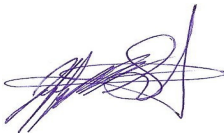
CDG ref. # 24-0201

Dear Ms. Nentwick-Kugler:

A field observation was completed to review the existing landscape plantings (parcel id#s listed above) to compare them to the landscape plans prepared by Cotleur & Hearing dated 10-25-2016. The project's landscaping was found to be roughly ninety-five (95) percent per the plans (excluding the interior courtyard). There were some areas where a few plants were missing in various planting beds, and there were a few beds where an entire plant mass was missing or has died, but the plantings would be considered substantially completed and meets the general intent of the City's landscape code and the landscape plans prepared by Cotleur & Hearing if those plantings were replaced. Please consider allowing the purchaser the opportunity to plant those missing plants at the completion of the review process if the project is approved, and prior to issuance of a City business license in lieu of preparing "As-built Landscape Plans".

Should you have any questions or comments please feel free to contact me.

Sincerely,



Jeffrey William Smith, RLA

900 East Ocean Boulevard, Suite 130d
Stuart, Florida 34994
Phone: (772) 344-2340
LC:26000198



LEGAL DESCRIPTION: (PER NEXGEN)

PARCEL 1: LOT 1 CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA (RPUD TRACT) PARCEL 2: COMMON AREA - UPLAND PRESERVE TRACT, LAKE TRACT, ACCESS TRACT - CLARITY POINTE ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 17 PAGE 68 PUBLIC RECORDS MARTIN COUNTY FLORIDA

CERTIFIED TO:

JASON ACKNER

FLOOD ZONE:

12085C0161H
ZONE: X
EFF: 02/19/2020

GENERAL NOTES:

- 1) THIS SURVEY IS BASED UPON RECORD INFORMATION BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
- 2) IF THIS SURVEY HAS BEEN PREPARED FOR THE PURPOSES OF A MORTGAGE TRANSACTION, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES. NO FUTURE CONSTRUCTION SHALL BE BASED UPON THIS SURVEY WITHOUT FIRST OBTAINING APPROVAL AND/OR UPDATES FROM NEXGEN SURVEYING, LLC. NEXGEN SURVEYING, LLC, ASSUMES NO RESPONSIBILITY FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
- 3) ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
- 4) GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS. 5) UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
- 6) ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988).
- 7) ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
- 8) CORNERS SHOWN AS "SET" ARE 5/8" IRON RODS IDENTIFIED WITH A PLASTIC CAP MARKED LS (LICENSED SURVEYOR)

Curve Table			
Curve #	Length	Radius	Delta
C1	66.18'	56.67'	66° 54' 39"
C2	31.20'	78.40'	22° 47' 53"

Line Table		
Line #	Length	Direction
L1	34.00'	N23° 44' 40"W
L2	16.34'	S43° 10' 02"W

LEGEND:

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING)

A/C-AIR CONDITIONER P.O.B.-POINT OF BEGINNING D.E.-DRAINAGE EASEMENT R-RADIUS(R)
WM-WATER METER P.O.C.-POINT OF COMMENCEMENT P.U.E.- PUBLIC UTILITY EASEMENT O.R.B.-OFFICIAL RECORDS BOOK
AL- ARC LENGTH P.B.-PLAT BOOK L.A.E.-LIMITED ACCESS EASEMENT SQ.FT.-SQUARE FEET
(C)-CALCULATED PG-PAGE L.M.E.-LAKE MAINTENANCE EASEMENT AC.-ACRES
(M)-MEASURED U.E.-UTILITY EASEMENT O.H.E.-OVERHEAD EASEMENT DB-DEED BOOK(D)-DEED

ELEV-ELEVATION ⚡ -LIGHT POLE # -NUMBER ⚡ -WELL ⚡ -FENCE
FF-FINISHED FLOOR -ASPHALT -WATER VALVE ± -PLUS OR MINUS
LS-LICENSED SURVEYOR -CONCRETE -CENTER LINE ⚡ -POLE
LB-LICENSED BUSINESS -PAVER/BRICK -CATCH BASIN ⚡ -MANHOLE
PSM-PROFESSIONAL SURVEYOR & MAPPER -WOOD -FIRE HYDRANT ⚡ -TOPOGRAPHIC ELEVATION

SURVEY NOTES:

- NO NOTABLE CONDITIONS FOUND

FIELD DATE: 2-9-2024

DRAWN BY: KG

ORDER NO:233671

REVISIONS:

1547 PROSPERITY FARMS ROAD
WEST PALM BEACH, FL 33403
NexgenSurveying.com LB#8111
PHONE: 561.508.6272
FAX: 561.508.6309



BOUNDARY SURVEY
500 SE INDIAN ST, STUART, FL 34997

I HEREBY CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PER CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

THE SEAL APPEARING
ON THIS DOCUMENT
WAS AUTHORIZED BY
CLYDE O. MCNEAL
PSM 2883
ON 2/13/2024



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2340-2017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AMENDING THE RPUD KNOWN AS "VILLAGIO STUART", CONSISTING OF 11.27 ACRES, OWNED BY TREASURE COAST PROPERTIES, LLC, AND APPLIED FOR BY CP-STUART DEVELOPMENT LLC, LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET APPROXIMATELY 580 FEET EAST OF THE INTERSECTION OF SE KANNER HIGHWAY AND SE INDIAN STREET, SAID PROPERTY BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED; FURTHER REPEALING ORDINANCE NUMBER 2042-05, AND ESTABLISHING THE CLARITY POINTE RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) CONSISTING OF AN 84 BED ASSISTED LIVING FACILITY WITH MEMORY CARE; AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN, THEREBY CHANGING THE FUTURE LAND USE DESIGNATION FROM "MULTI-FAMILY RESIDENTIAL" TO "COMMERCIAL" FOR A 1.92 ACRE PORTION OF SAID PROPERTY; PROVIDING THAT SAID PROPERTY SHALL CONCURRENTLY REZONED FROM "RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD)" TO "COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD)" ON THE CITY'S OFFICIAL ZONING MAP; APPROVING A MASTER DEVELOPMENT PLAN FOR THE OVERALL CLARITY POINTE PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR DEVELOPMENT CONDITIONS; A TIMETABLE FOR DEVELOPMENT, DECLARING THE PLAN TO BE CONSISTENT WITH THE CITY'S COMPREHENSIVE PLAN; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission to consider the application by Treasure Coast Properties, LLC, (Owner) and CP-Stuart Development LLC (Applicant) for a 11.27-acre parcel of land located on the south side of SE Indian Street 580 feet east of the intersection of SE Kanner Highway and SE Indian Street; and

WHEREAS, the City of Stuart has determined the need to change the Future Land Use and Land Development zoning district for said lands; and

WHEREAS, the City Commission, has considered the Owner and Applicant's voluntary request for land use and zoning designations, and has also considered the recommendation of the City staff.

WHEREAS, the Owner and Applicant has committed to the City that its development will comply with all development codes, plans, standards and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon approval of the CPUD and RPUD; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the Clarity Pointe PUD development will be in harmony with surrounding properties and their anticipated development;

WHEREAS, the foregoing recitals are true and adopted as findings of fact and conclusions of law.

WHEREAS, the property is legally described in **“Exhibit A”** of this ordinance. A map depicting the property is attached hereto as **Exhibit “B”** and made a part hereof by reference; and development conditions including a timetable for construction of amenities attached hereto as **Exhibit “C”**;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:

SECTION 1: The following new documents are on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit “D”**, hereinafter the “Development Documents”, shall be deemed a part of the development conditions, and shall supplement any earlier approvals:

1. The Site Plan, prepared by Cotleur and Hearing, Inc., dated 08.26.16, last revised on 10.25.16.
2. The Boundary & Topographic Survey, prepared by GCY Incorporated, dated 01.07.16.
3. The Landscape Plan, Sheet 1 thru 2, prepared by Cotleur and Hearing, Inc., dated 08.26.16, and resubmitted on 10.25.16.
4. The Littoral Landscape Plan, Sheet 1 of 1, prepared by Cotleur and Hearing, Inc., dated 08.26.16, and resubmitted on 10.25.16.
5. Preserve Area Maintenance Plan, prepared by Crossroads Environmental, dated October 2016.
6. Photometric Plans, Sheets PHM-1 thru 2, prepared by Cotleur and Hearing, Inc. and signed and sealed by E&C Engineers, dated 08.26.16.
7. Overall Ground Floor Plan, Sheet AE110, prepared by Leo A Daly, and dated 08.26.16.
8. Exterior Elevations, Sheet AE 201, prepared by Leo A Daly, and dated 08.26.16.

9. Sample Color Board, prepared by Leo A Daly.

10. Clarity Pointe Outparcel Design Principles, prepared by Cotleur and Hearing, Inc.

SECTION 2: The Future Land Use designation in the City's Comprehensive Land Use Plan shall be established as "Commercial". This ordinance may not become effective until 31 days after adoption. If challenged within 30 days after adoption, this ordinance may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted small scale development amendment is in compliance as defined in F.S. 163.3184(1)(b).

SECTION 4: The Land Development (Zoning) District designation on the City of Stuart Official Zoning Map shall be established as "CPUD" Commercial Planned Unit Development subject to the appeal period stated in Section 2, above.

SECTION 5: Except as otherwise provided herein, no development permits, site permits, or building permits shall be issued by the City except in compliance with the City's Land Development Code.

SECTION 5: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof is hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 6: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

the Owner. However, the Future Land Use and Zoning Designations granted herein shall not be effective until thirty-one (31) days after adoption, and as otherwise provided by law.

SECTION 8: Upon complete execution of this Ordinance, including the Acceptance and Agreement by the Owner, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

PASSED on First Reading this 12th day of December, 2016.

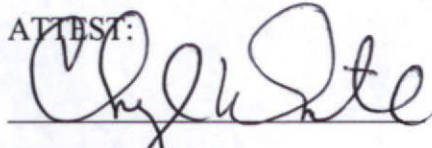
Commissioner MCDONALD offered the foregoing ordinance and moved its adoption. The motion was seconded by Commissioner GLASS LEIGHTON and upon being put to a roll call vote, the vote was as follows:

EULA CLARKE, MAYOR
THOMAS CAMPENNI, VICE MAYOR
TROY MCDONALD, COMMISSIONER
KELLI GLASS LEIGHTON, COMMISSIONER
JEFFREY A KRAUSKOPF, COMMISSIONER

YES	NO	ABSENT
X		
X		
X		
X		
X		

ADOPTED on second and final reading this 9th day of January, 2017.

ATTEST:



CHERYL WHITE

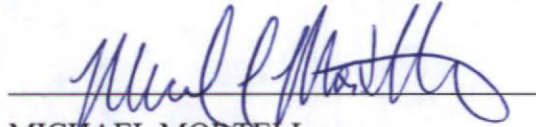
CITY CLERK



EULA R. CLARKE

MAYOR

APPROVED AS TO FORM AND CORRECTNESS:



MICHAEL MORTELL

CITY ATTORNEY

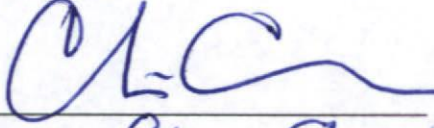


ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN A RESIDENTIAL PLANNED UNIT DEVELOPMENT AND IN ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE ORDINANCE. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO DEVELOP THIS RESIDENTIAL PLANNED UNIT DEVELOPMENT ACCORDING TO THIS ORDINANCE, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

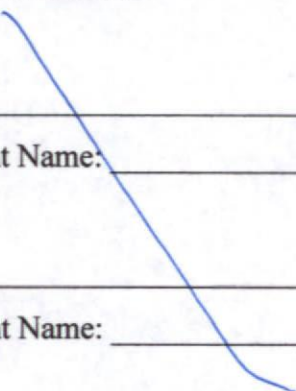

Print Name: Chris Campbell


Print Name: Lydia Gallup

CP-Stuart Development, LLC

By: 
Richard Olson, Managing Partner

WITNESSES:


Print Name: _____

Print Name: _____

Treasure Coast Properties Investments, LLC

By: _____

see pg. 10

PETITIONER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 23rd day
of January, 2017, by Richard Olson, Managing Partner.



[Signature]
Notary Public, State of Florida
My Commission Expires: 9/5/20

Notary Seal

Personally Known X OR Produced Identification _____

Type of Identification Produced _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____ day
of _____, 2016, by _____.

Notary Public, State of Florida
My Commission Expires: _____

see pg. 11

Notary Seal

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

WITNESSES:

Print Name: _____

Print Name: _____

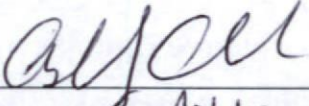
CP-Stuart Development, LLC

By: _____

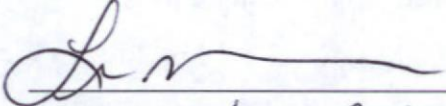
Richard Olson, Managing Partner

see pg. 8

WITNESSES:



Print Name: Ashley Clark



Print Name: Lisa Bishop

Treasure Coast Properties Investments, LLC

By: Alexander N. Britton

Alexander N. Britton, manager

PETITIONER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this ____ day
of _____, 2017, by Richard Olson, Managing Partner.

See pg. 9

Notary Public, State of Florida

My Commission Expires:

Notary Seal

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

OWNER'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 20 day
of January, ²⁰¹⁷~~2016~~, by Alexander N Britton

Irazely Garaboa

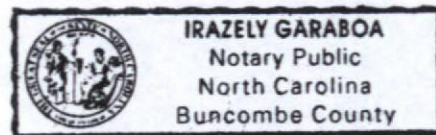
Notary Public, State of ~~Florida~~ ^{North Carolina}

My Commission Expires:

Notary Seal

Personally Known X OR Produced Identification _____

Type of Identification Produced _____



CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 9th day
of Jan, 2017, by Eula R. Clarke, Mayor, and Cheryl White, City Clerk,
respectively, of the City of Stuart, Florida, a Florida municipal corporation.

Alaina Knofla

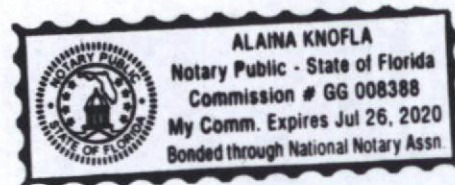
Notary Public, State of Florida

My Commission Expires:

Notary Seal

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____



LEGAL DESCRIPTION

CLARITY POINTE OUT PARCEL

A PARCEL OF LAND BEING A PORTION OF LOTS 14 AND 15, LYING SOUTH OF INDIAN STREET AND LOTS 18 AND 19 AND A PORTION OF THE FORMER 60 FOOT WIDE RIGHT OF WAY THROUGH AFORESAID LOTS, ACCORDING TO THE PLAT OF STUART FARMS, AS RECORDED IN PLAT BOOK 1, PAGE 63, PUBLIC RECORDS OF PALM BEACH COUNTY (NOW MARTIN COUNTY), FLORIDA; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE POINT OF INTERSECTION OF THE CENTERLINE OF STATE ROAD 76 AND THE CENTERLINE OF INDIAN STREET; THENCE NORTH $66^{\circ}15'19''$ EAST, ALONG SAID CENTERLINE OF INDIAN STREET, A DISTANCE OF 47.42 FEET; THENCE SOUTH $23^{\circ}44'41''$ EAST, A DISTANCE OF 50.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF INDIAN STREET; THENCE NORTH $66^{\circ}15'19''$ EAST ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 1027.71 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE $66^{\circ}15'19''$, A DISTANCE OF 374.35 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE SOUTH $23^{\circ}44'42''$ EAST, A DISTANCE OF 200.12 FEET; THENCE SOUTH $66^{\circ}15'19''$ WEST, A DISTANCE OF 188.16 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 78.40 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $22^{\circ}47'42''$ A DISTANCE OF 31.19 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH $54^{\circ}32'06''$ WEST, A CHORD DISTANCE OF 30.99' TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 154.00 FEET; THENCE SOUTHERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $45^{\circ}18'38''$ A DISTANCE OF 121.79 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH $65^{\circ}47'34''$ WEST, A CHORD DISTANCE OF 118.64 FEET TO THE BEGINNING OF A REVERSE CURVE HAVING A RADIUS OF 70.00 FEET; THENCE WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $81^{\circ}35'22''$ A DISTANCE OF 99.68 FEET, SAID CURVE HAVING A CHORD BEARING OF SOUTH $47^{\circ}39'12''$, A CHORD DISTANCE OF 91.47 FEET; THENCE NORTH $23^{\circ}44'41''$ WEST NON-TANGENT TO THE LAST DESCRIBED CURVE, A DISTANCE OF 144.02 FEET; THENCE NORTH $43^{\circ}10'02''$ EAST, A DISTANCE OF 16.34 FEET TO A TANGENT CURVE, CONCAVE NORTHWESTERLY HAVING A RADIUS OF 56.67 FEET; THENCE NORTHEASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 66.18 FEET TO THE END OF CURVE; THENCE NORTH $23^{\circ}44'40''$ WEST, A DISTANCE OF 34.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.92 ACRES, MORE OR LESS

PROVIDED IN ITS ENTIRETY CONSISTING OF 4 SHEETS, WITH SHEET 3 AND 4 BEING THE SKETCH OF DESCRIPTION.

NO.	REVISIONS	DATE	BY



Sketch CP - Stuart Development, LLC MARTIN COUNTY, FLORIDA			
Scale: NA	Date: Jan. 2017	File & Drawing No.: 16-1001-03-03	
Drawn By: M.F.M.	Checked: P.A.	Sheet 1	of 4

SURVEYOR'S NOTES

1. THIS SKETCH AND LEGAL DESCRIPTION IS BASED ON OFFICE INFORMATION ONLY AND DOES NOT REPRESENT A BOUNDARY SURVEY.
2. THIS LEGAL DESCRIPTION SHALL NOT BE VALID UNLESS:
 - A) PROVIDED IN ITS ENTIRETY CONSISTING OF 4 SHEETS, WITH SHEETS 3 & 4 BEING THE SKETCH OF DESCRIPTION.
 - B) REPRODUCTION OF THE DESCRIPTION AND SKETCH ARE SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
3. BEARINGS SHOWN HEREON ARE REFERENCED TO THE SOUTHERLY RIGHT-OF-WAY LINE OF S.E. INDIAN STREET, HAVING A BEARING OF N66°15'19"E, AND ALL OTHERS ARE RELATIVE THERETO.

CERTIFICATION

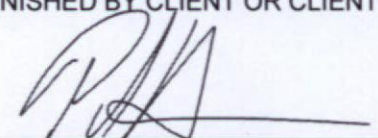
(NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER)

I HEREBY CERTIFY THAT THE SKETCH AND LEGAL DESCRIPTION OF THE PROPERTY SHOWN AND DESCRIBED HEREON WAS COMPLETED UNDER MY DIRECTION AND SAID SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYS SET FORTH BY THE FLORIDA PROFESSIONAL BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 5J-17.052, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATE STATUTES. THE SKETCH AND DESCRIPTION IS BASED ON INFORMATION FURNISHED BY CLIENT OR CLIENT'S REPRESENTATIVE.

1/23/2017

DATE OF SIGNATURE



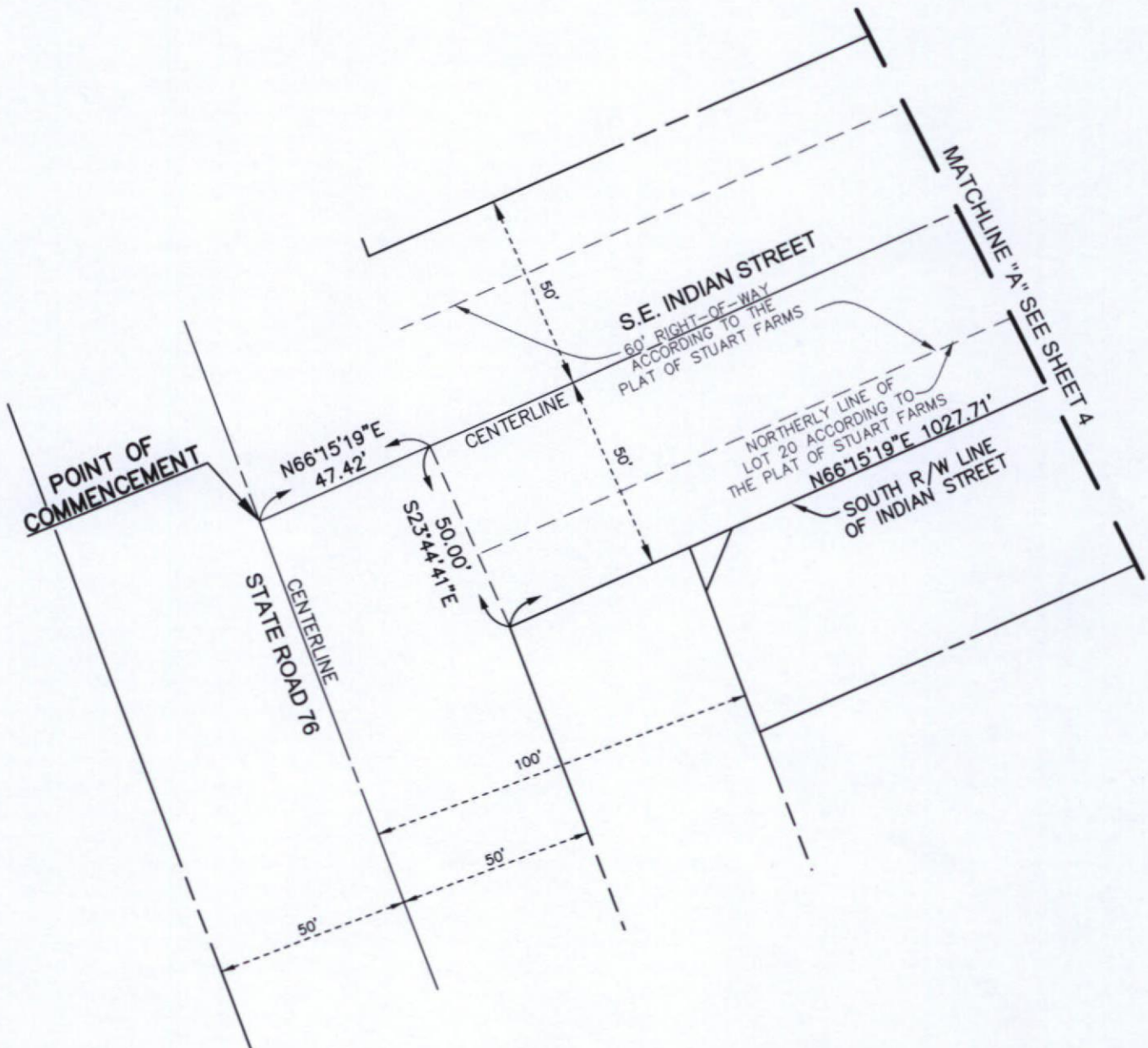
PETER ANDERSEN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5199

PROVIDED IN ITS ENTIRETY CONSISTING OF 4 SHEETS, WITH SHEET 3 AND 4 BEING THE SKETCH OF DESCRIPTION.

NO.	REVISIONS	DATE	BY



Sketch		CP - Stuart Development, LLC	
MARTIN COUNTY,		FLORIDA	
Scale: NA	Date: Jan. 2017	File & Drawing No.: 16-1001-03-03	
Drawn By: M.F.M.	Checked: P.A.	Sheet 2 of 3	



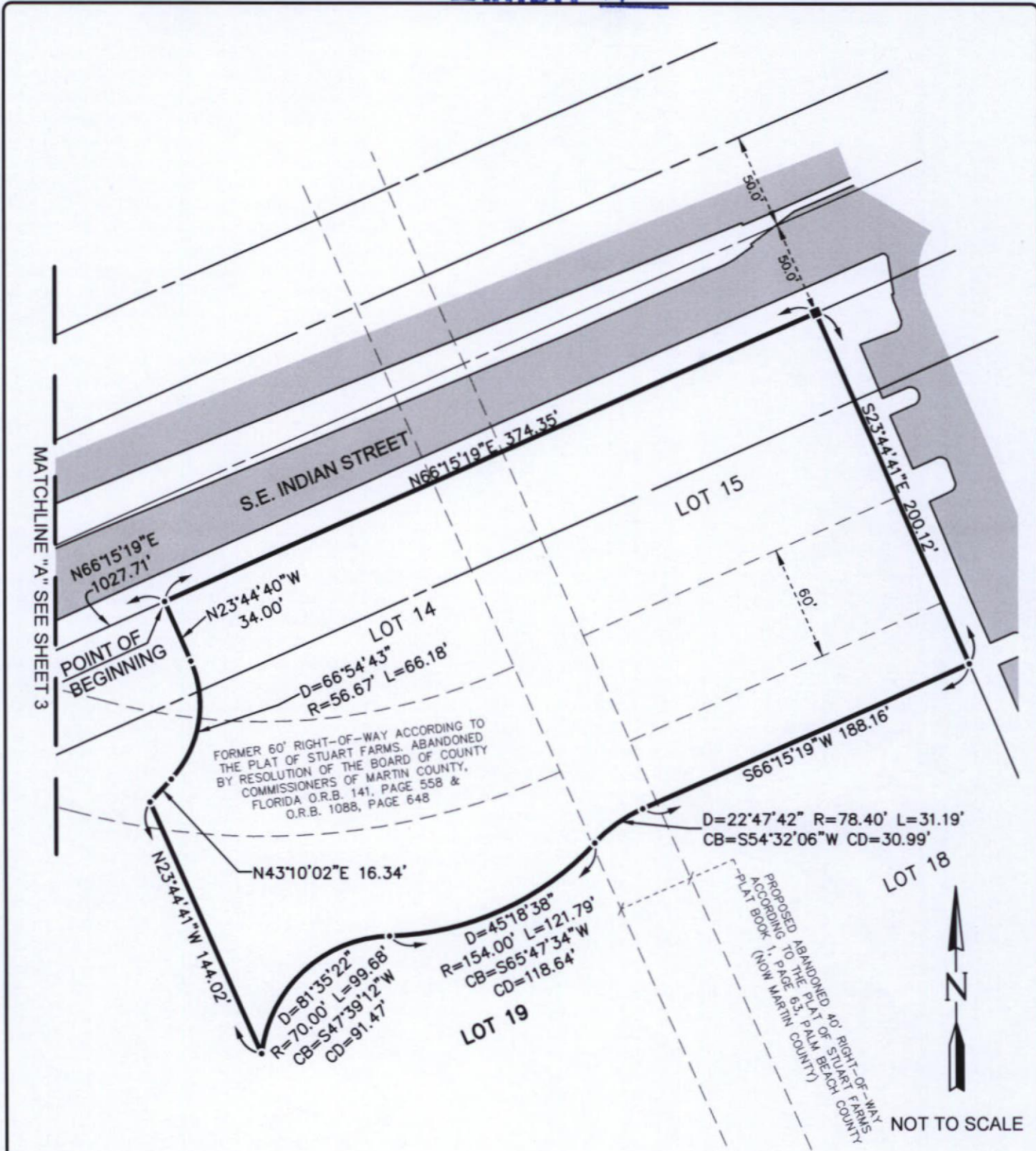
NOTE:
This drawing does not represent
a boundary survey and is based
on office information only.

PROVIDED IN ITS ENTIRETY CONSISTING
OF 4 SHEETS, WITH SHEET 3 AND 4 BEING
THE SKETCH OF DESCRIPTION.

NO.	REVISIONS	DATE	BY

G C Y
INCORPORATED
PROFESSIONAL SURVEYORS AND MAPPERS
CERTIFICATE OF AUTHORIZATION LB 4108
CORPORATE OFFICE
PO BOX 1469 • 1505 SW MARTIN HWY.
PALM CITY, FL 34991
(800) 386-1086 • WWW.GCYINC.COM

Sketch CP - Stuart Development, LLC MARTIN COUNTY, FLORIDA			
Scale: NA	Date: Jan. 2017	File & Drawing No.: 16-1001-03-03	
Drawn By: M.F.M.	Checked: P.A.	Sheet 3	of 4



NOTE:
 This drawing does not represent a boundary survey and is based on office information only.

PROVIDED IN ITS ENTIRETY CONSISTING OF 4 SHEETS, WITH SHEET 3 AND 4 BEING THE SKETCH OF DESCRIPTION.

NO.	REVISIONS	DATE	BY



GCY INCORPORATED
 PROFESSIONAL SURVEYORS AND MAPPERS
 CERTIFICATE OF AUTHORIZATION LB 4108

CORPORATE OFFICE
 PO BOX 1469 • 1505 SW MARTIN HWY.
 PALM CITY, FL 34991
 (800) 386-1066 • WWW.GCYINC.COM

Sketch CP - Stuart Development, LLC MARTIN COUNTY, FLORIDA			
Scale: NA	Date: Jan. 2017	File & Drawing No.: 16-1001-03-03	
Drawn By: M.F.M.	Checked: P.A.	Sheet 4 OF 4	

EXHIBIT B – LOCATION MAP



EXHIBIT C – DEVELOPMENT CONDITIONS

Approved Plans and Documents (Exhibit D)

1. The Clarity Pointe PUD (including the Adult Living Facility and CPUD outparcel project) and use thereof shall comply with the following documents and drawings:
 - a. The Master Site Plan, prepared by Cotleur and Hearing, Inc., dated 08.26.16, last revised on 10.25.16.
 - b. The Boundary & Topographic Survey, prepared by GCY Incorporated, dated 01.07.16.
 - c. The Landscape Plan, Sheet 1 thru 2, prepared by Cotleur and Hearing, Inc., dated 08.26.16, and resubmitted on 10.25.16.
 - d. The Littoral Landscape Plan, Sheet 1 of 1, prepared by Cotleur and Hearing, Inc., dated 08.26.16, and resubmitted on 10.25.16.
 - e. Preserve Area Maintenance Plan, prepared by Crossroads Environmental, dated October 2016.
 - f. Photometric Plans, Sheets PHM-1 thru 2, prepared by Cotleur and Hearing, Inc. and signed and sealed by E&C Engineers, dated 08.26.16.
 - g. Overall Ground Floor Plan, Sheet AE110, prepared by Leo A Daly, and dated 08.26.16.
 - h. Exterior Elevations, Sheet AE 201, prepared by Leo A Daly, and dated 08.26.16.
 - i. Sample Color Board, prepared by Leo A Daly.
 - j. Clarity Pointe Outparcel Design Principles, prepared by Cotleur and Hearing, Inc.
2. Land clearing of the CPUD outparcel will be permitted with approval of the RPUD site plan. Development of the CPUD outparcel portion of the site beyond land clearing shall require a future Major PUD amendment, and shall comply with the Clarity Pointe Outparcel Design Principles and will include uses and structures substantially related to the character of the overall Clarity Pointe PUD itself and to the adjacent property.

3. The CPUD outparcel can be partially cleared and filled as part of the Land development activities associated with the RPUD portion of the property with the following conditions:
 - a. 30' wide native vegetative and tree buffer shall be preserved along the western, northern and eastern boundaries of the CPUD outparcel.
 - b. Tree Removal Fees for trees removed within the center portion of the outparcel which are identified within the Tree Mitigation Analysis shall be paid prior to the issuance of a Land Development Permit. There are no refunds of these fees.
 - c. Fill placed within the center of the outparcel shall be graded and seeded to direct storm water runoff to the development's master water management system.
 - d. Prior to land clearing approval for the RPUD, the Applicant shall provide the City a surety bond (in a form acceptable to the City Attorney) for the amount of \$50,000 to cover the replacement of all removed trees or other vegetation that have died within the buffer area as a result of the clearing of the CPUD outparcel prior to issuance of a land clearing permit for the CPUD. If construction of the CPUD outparcel has not started within three years after clearing, the total amount of the bond will be forfeit to the city.
4. Any modifications to the Master PUD Site Plan that exceeds 10% of the approved building footprint, building setbacks, gross square footage, building location, parking size, location and number of parking, drainage areas, and location of landscaping may be approved by the City's Development Director, provided however, the Development Director may refer the matter to the City Commission for approval via a public hearing.
5. All applicable state or federal permits must be obtained before the commencement any development activities. Issuance of this development order/permit/approval by the City of Stuart does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Stuart for the issuance of this order/permit/approval if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

6. To fulfill the requirement that a sketch and legal description be made part of this ordinance, the applicant shall provide the City with a sketch and meets & bounds legal description of the 1.92-acre commercial parcel (prepared by a licensed surveyor and acceptable to the City) prior to the recoding of this ordinance, failing which this ordinance shall become void.
7. The applicant shall have 60 days from the date of this approval to sign and record this document with the City Clerk of Stuart.

Landscaping, Required Open Space and Tree Mitigation

8. The common buffer and other common areas shall be provided with landscaping with an irrigation system of sufficient capacity to maintain the landscaping in a healthy growing condition.
9. The City's landscape inspector shall have the opportunity to inspect all trees and/or landscape material with the landscape architect prior to installation. The developer shall bear the pass-thru fee for landscape consulting fees not to exceed \$1,500.00.
10. Not less than 30% of the RPUD and CPUD combined shall be open space as defined in the City Land Development Regulations. Required open space may include native vegetation areas and landscape buffers between the RPUD and adjacent property; however, other required landscaping shall not count towards the open space requirement.
11. Prior to any development activities on the site, any applicable payment into the City's tree replacement fund based on the City's Tree Replacement Formula, Section 5.05.02, shall be made. Solely at the City's discretion, the applicant may donate and/or locate mitigated trees in a public areas designated by the City.
12. "Hat racking" of trees is prohibited on the property.

13. A landscape maintenance plan for landscaping in the common space, executed in accordance with the Land Development Regulations, shall be submitted to the Development Department and approved prior to the issuance of a certificate of occupancy. Prior to land clearing approval, the applicant shall provide financial assurance for not less than five for monitoring and maintenance of the preserve area.
14. Any trash, debris, and exotics shall be removed from the preserve area. The preserve Area shall be maintained in perpetuity in accordance with the Preserve Area Maintenance Plan by Crossroad Environmental and dated October 2016.
15. A tree protective barrier plan shall be reviewed, approved and inspected by the landscape architect and by a City staff person on-site prior to construction activity to ensure that all preserve areas are not disturbed.
16. Fill material should be inorganic containing not more than five percent (5%) by weight organic material. Fill materials with silt/clay-sized soil fines in excess of 12% should not be used. Fill should be placed in lifts with a maximum lift thickness not exceeding 12-inches. Density tests should be performed as recommended by the Geotechnical Report prepared by GFA International.
17. Pursuant to Section 5.01.00, the applicant shall provide prior to building permit approval evidence of achievement of elimination and reduction/avoidance and minimization of wetland impacts from the South Florida Water Management District (SFWMD) and United States Army Corps of Engineers (USACE). This evidence may be in a form of a letter of intent to issue a permit from the USACE and SFWMD. Prior to any development activities on the site, the applicant shall also provide the final SFWMD approval of wetland mitigation demonstrating the WRAP score for the herbaceous wetland mitigation does not exceed the .6 credits purchased thru the Bluefield Ranch Mitigation Bank.
18. Prior to and during the construction period, the applicant shall provide a schedule for the inspection and maintenance of barricades and erosion controls.

19. Prior to the development permit approval, the applicant shall revise the Preserve Area Maintenance Plan (PAMP) to include a five-year period and shall indicate that the property owner will be responsible for the maintenance of the preserve area in perpetuity and in accordance with the provisions of the PAMP.
20. The Applicant agrees that the Future Land Use category of the preserve area may be changed to “Conservation” at the discretion of the City.

Prior to Issuance of Site Permits

21. Applicant shall provide a digital boundary survey and civil plan prior to the issuance of a site permit.
22. Final Development plans and/or Construction Drawings and Building Plans shall be submitted, reviewed, and approved by the City prior to the issuance of any Development Permits.
23. Civil Plans shall be reviewed and approved by all applicable City departments prior to the issuance of a site permit.
24. All regulatory agency permits, including but not limited to the South Florida Water Management District and Army Corp of Engineers, shall be obtained by the applicant and copies provided to the City prior to the commencement of any development activities.
25. All development activities shall comply with the City’s Concurrency Management System prior to the issuance of building permits.

Development and Construction

26. The Developer shall install entry landscaping prior to the first certificate of occupancy for the Assisted Living Facility.

27. Construction activity shall be limited to 7:00 am to 6:00 pm Monday thru Friday and 8:00 am to 6:00 pm Saturday thru Sunday. Water trucks shall be provided by the applicant as necessary during construction in order to reduce dust generated on-site.
28. The Developer shall provide enclosed dumpster details on submitted civil construction plans prior to final site plan approval acceptable to the City's Public Works Department.
29. The Developer shall ensure a continuous pedestrian connection between the Assisted Living Facility and the CPUD outparcel.
30. Prior to certificate of occupancy of the Assisted Living Facility, the applicant shall provide an engineer's written confirmation attesting that the entire PUD's storm water system is in place and functioning in compliance with all approved plans and specifications, including any necessary storm water treatment on the CPUD parcel.
31. Erosion and dust control measures to be implemented during construction shall be provided on the civil plans and submitted during site permit review. Water trucks shall be provided by the applicant as necessary during construction in order to reduce dust generated on-site.
32. All utility improvements constructed by the developer within Martin County's right-of-way, shall be constructed in a manner and form acceptable to Martin County's Engineering Department. The developer shall grant any such utility easements necessary for this site as may be required by Martin County.
33. The project's storm water facilities, specifically the Native Planting schemes at the drainage swale and retention areas, will be designed using Low Impact Development "(LID) Techniques as described in the University of Florida IFSA Extension publication LID Practices: Integration Wetlands and Enhancing Storm water Basins". The proposed retention area shall have native grasses along the edges of the retention area are to become part of the stormwater filtration process.

34. Loading areas, trash collection, mechanical equipment, trash compaction, recycling, rooftop equipment and other service function areas shall be fully screened and out of view and shall be maintained in a clean and orderly fashion.
35. All development shall be complaint with Americans with Disabilities Act (ADA) in regards to handicap accessibility.
36. Any sidewalk damaged during the construction shall be repaired or replaced prior to the issuance of a Certificate of Occupancy.
37. Lighting shall comply with Section 6.07.00 of the Land Development Code and reviewed by Police for CEPTED/Crime Prevention recommendations prior to final site plan approval. Lighting shall include shields to direct the light away from residential areas.

Signage

38. The PUD's monument sign shall adhere to the City of Stuart Land Development Code.

Utilities

39. The applicant is responsible for all costs associated with the construction of the proposed utilities and with the abandonment of the existing utilities water main and relocation of existing light poles.

Development Timetable

40. By December 12, 2019, all on-site infrastructure improvements necessary to support development of the entire multi-family residential site shall be in place and achieve final inspection.

Prohibited

- 41. No temporary or modular buildings are permitted on the property except for permitted temporary construction/leasing trailers
- 42. Billboards are prohibited on the property.
- 43. Banners and any other sign or advertising device not in accordance with the City's Land Development Regulations are prohibited.

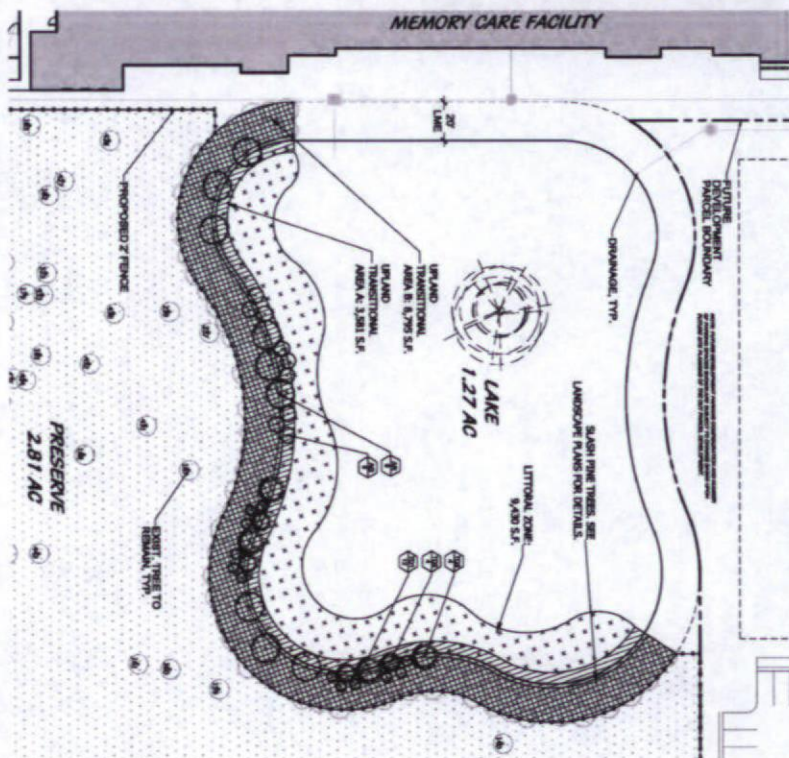
Platting - HOA Requirements & Future Amendments

- 44. Prior to application for any development, the applicant/developer shall establish a legal entity or Property Owner's Association (POA) which shall maintain a uniform control over all areas of the overall Clarity Pointe PUD in a form acceptable to the City Attorney, and which shall be singularly responsible for the perpetual maintenance of the common site features. Such person, POA or entity shall be legally capable of providing a commitment to the city that the PUD development and common maintenance will comply with all PUD documents, plans, standards and conditions, including the PAMP.
- 45. Prior to any construction development approval, the applicant shall obtain a Parcel Control Number for the CPUD outparcel and provide a unity of title over both properties.
- 46. Prior to the sale of the CPUD or dissolution of the unity of title, the applicant shall obtain plat approval and provide evidence that would bind his successors in title to any commitments made within this PUD approval.
- 47. Any future applications to amend this Ordinance shall be limited to the developer or the means of uniform control established in a form acceptable to the City Attorney.

Abandonment of Right-of-Way

- 48. Prior to, or in tandem with plat approval, the applicant shall provide the city with an appraisal of the value of the right-of-way shown on the subject property and in exchange

for a privilege fee equal to the appraisal; the City shall transfer to the applicant any interest the City may have in said Right of Way. The City is not providing any warranty regarding the Right of Way and is only extinguishing any interest which might be vested with the City. Or in the alternative, the applicant may pursue abandonment of said Right of Way, pursuant to Section 11.01.04. Development approval should be granted until either the City's interest is relinquished or former abandonment occurs.

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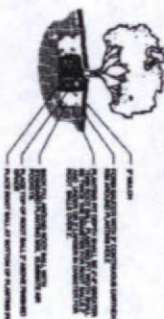
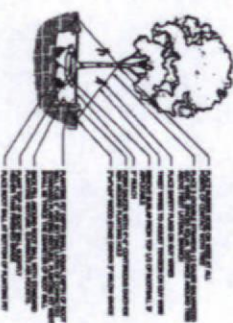
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LITERRAL SCORE BY	REQUIRED	PROHIBITED	
YES TO STATE INCOME	0-400	0-400	
YES	10	10	
YES 1 THROUGH 10 BY LITERRAL			
UP-AND-TWO-THREE-FOUR PLANNING DATA			
TOTAL CASES REPORTED BY		543	12
UP-AND DATA BY	REQUIRED	PROHIBITED	
YES TO STATE INCOME	0-400	12,799	
YES	10	10	
YES 1 THROUGH 10 BY LITERRAL			

[illegible]

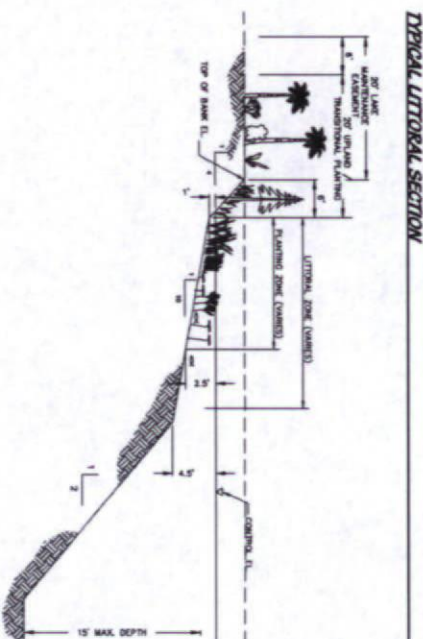
LANDSCAPE NOTES

1. The following information is being furnished to you for your information only. It is not intended to constitute an offer of insurance or any other financial product. The information is being provided to you for your information only and should not be used as a basis for any investment decision. The information is being provided to you for your information only and should not be used as a basis for any investment decision.

PLANTING DETAILS

www.sprayinggroundcover.com PLANTING DETAILS

LARGE TREE PLANTING DETAIL

LITTORAL
LANDSCAPE PLAN

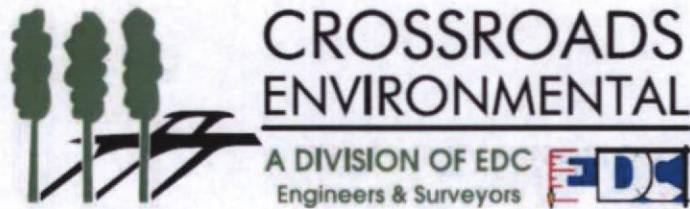
Clarity Point

Preserve Area Maintenance Plan

Prepared for:

**Clarity Point
and
The City of Stuart**

Prepared by:



**3500 SW Corporate Parkway; Suite 206
Palm City, Florida 34990**

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October 2017

Introduction

The Clarity Point project is a ± 11.3 acre project, proposed for construction of an assisted living facility as well as a commercial center with associated infrastructure. Mitigation for this project consists of both on site and off site mitigation. Off site mitigation includes the purchase of wetland mitigation credits and a tree preservation agreement with the City of Stuart. Exotic vegetation eradication, replanting with native vegetation (if necessary), and preservation are the major components of the project's maintenance and monitoring activities. On site mitigation includes the enhancement, maintenance and monitoring of the upland preserve area.

Control of Nuisance and Exotic Vegetation -

All nuisance and exotic vegetation as listed by the Florida Exotic Pest Plant Council will be controlled within the upland preserve areas. Monitoring of the planted area will be conducted on a semi annual basis for the first two years, and annually thereafter. Presence of nuisance and exotic vegetation will prompt maintenance activities. If maintenance becomes necessary removal will be conducted as follows:

- All Brazilian Pepper trees and other woody exotics will be eradicated by cutting of the trunk and treatment of the stump with an appropriately labeled herbicide. Vegetative debris will either be removed from the wetland and disposed of off site or allowed to be killed in place.
- The criterion for completion of the woody exotic eradication will be 100 percent kill. If initial eradication efforts do not achieve this criterion, follow up treatment will be conducted.
- Any debris removed will be handled in accordance with the disposal specifications.
- All eradication of non-woody exotic vegetation will be through application of appropriately labeled herbicide.
- The criterion for acceptance of eradication for all non-woody exotic vegetation will be 100 percent kill. If initial eradication efforts do not achieve this criterion, follow up treatment will be conducted.

The exotic vegetation eradication in the on site preserve may generate vegetative debris that requires disposal. There will be a staging and storage area provided adjacent to the preserve area.

- Transport of vegetative debris from the preservation area to the staging area will be conducted in a fashion that minimizes the distribution and dispersal of seeds from such debris.
- No cut exotic or nuisance vegetative material will be left in the preservation area.
- When possible, woody exotic vegetation removed from the preservation area will be burned in accordance with local regulations.

- All remaining vegetative debris, either whole or chipped/mulched will be hauled off site and disposed of at a landfill or other such appropriately licensed facility.

Herbicides are required for the treatment of all stumps of woody vegetation to prevent re-growth, and for eradication of non-woody exotic and nuisance vegetation.

- All herbicide application activity will be conducted under the supervision of a Florida Department of Agriculture licensed applicator, licensed for application of aquatic herbicides.
- All herbicides applied within the wetland area must be properly labeled for application in wetlands.
- All herbicide applied must include a visible tracer dye in the mix to facilitate observation of treated vegetation.

Replanting with Native Vegetation -

The vegetative success criteria for the upland preserve area includes the requirement for 80 percent coverage of desirable vegetation by the end of the second year, and aerial coverage of exotic vegetation at zero percent and nuisance vegetation limited to 5 percent or less. After five years, the preserve area will continue to meet the vegetative success criteria of 80 percent coverage of desirable vegetation and aerial coverage of exotic vegetation at zero percent and nuisance vegetation limited to 5 percent or less. Replanting should not be necessary, but if this criteria is not met then appropriate vegetation will be planted after consultation and approval with the City of Stuart.

Monitoring

The monitoring plan includes preparation of a summary of the success criteria photo stations and data collection stations established through the preservation area. A total of four data collection stations will be established along with two photo stations in order to document vegetative coverage and hydrologic conditions in the upland preservation area. Photographs and a brief summary with regards to compliance with the success criteria will also be included for the on site dry preservation area plantings.

Vegetative coverage will be documented at each of the data collection stations in the Monitoring Plan. The vegetative coverage will be measured as absolute coverage within an area of approximately 2,500 square feet at each monitoring station. The vegetation will be measured in percent coverage of the canopy/understory layer and ground cover. The total percent cover will not exceed 100 percent, and each species documented will be reported in both common and Latin names. The coverage will be measured by visual observation in each of four quadrants from the fixed monitoring point. Observations will extend approximately 50 feet from the observer in each direction thus covering approximately 2,500 square feet at each station. The data from each quadrant observation will be combined to calculate the vegetative coverage. Station locations will be permanently marked with PVC pipe to ensure consistency in data

collection. At least two photos will be collected from each of the established photo stations to provide documentation of vegetative coverage.

In addition to vegetative coverage documentation, the water level and/or soil saturation at each data collection station will be reported, as well as any observed macrofauna, wildlife utilization, or indicators of wildlife (i.e. tracks, scat, etc.). Also, each report will include data on rainfall from the closest available rain gage.

The monitoring will be conducted on a semi-annual basis with data collection at or near the end of the wet season and the dry season. The semi-annual data will be collected into one report that will be provided on an annual basis during the first two years so that maintenance activity can be closely tracked. The reports provided at the end of two years will include a discussion and conclusion regarding achievement of the success criteria as per the permit.

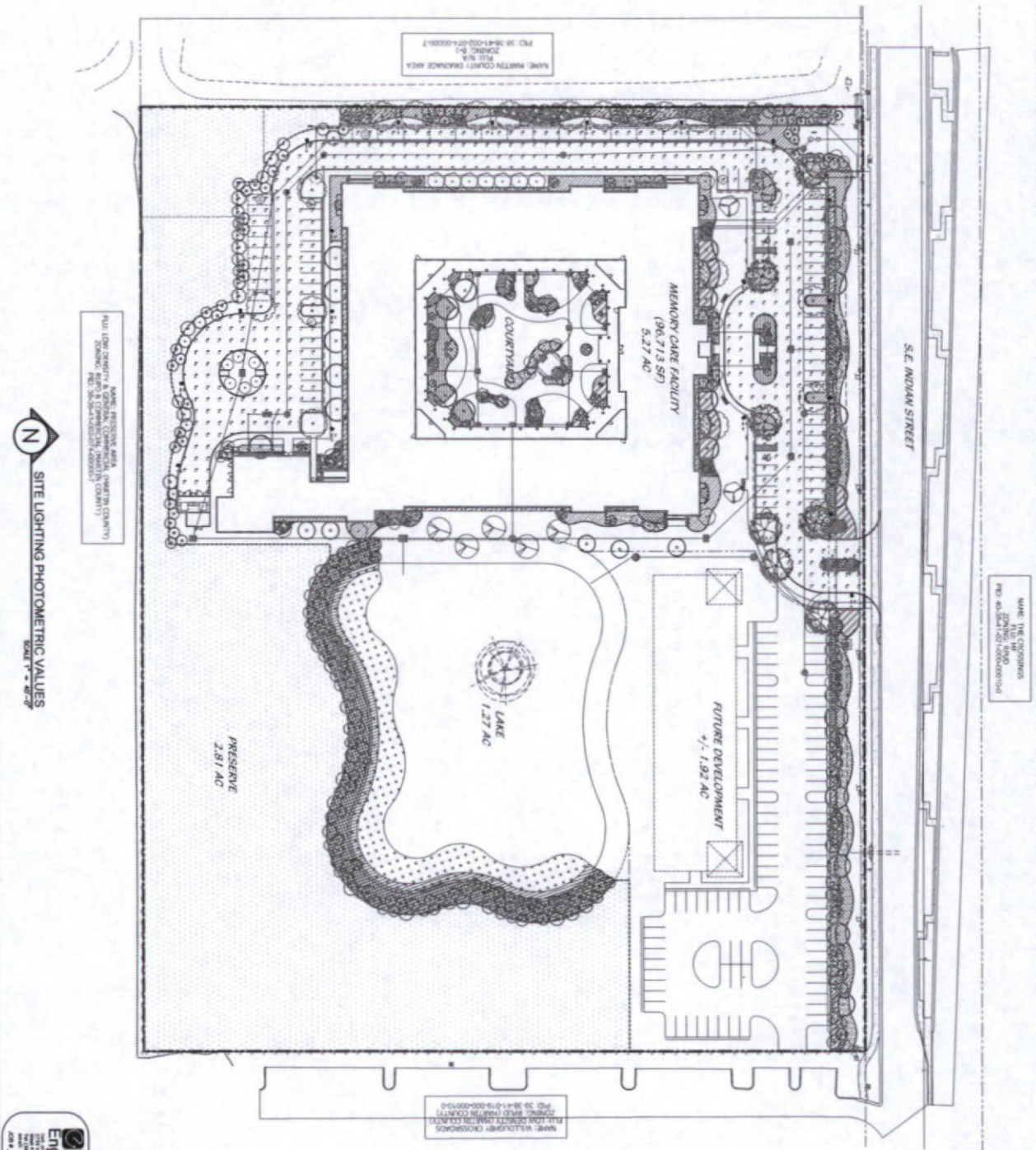
Maintenance

Each monitoring report will include recommendations for maintenance if necessary. The threshold for maintenance requirements will be any area that has five percent or more total vegetative coverage by nuisance or exotic vegetation at any time during the monitoring period. Additionally, any areas that have not achieved the 80 percent coverage requirement at the end of two years will be recommended for supplemental planting to meet this criterion. The vegetative success criteria for the preservation area include the requirement for 80 percent coverage of desirable vegetation by the end of the second year, and areal coverage of exotic vegetation at zero percent and nuisance vegetation limited to five percent or less.

Monitoring/Maintenance Work Schedule

The schedule for conducting the proposed mitigation is based on the date of permit issuance from the appropriate agencies. The following schedule is proposed, which will provide for specific dates upon permit issuance.

<u>Activity</u>	<u>Months after Permit Issuance</u>
Conduct exotic removal within preserve	4 months
Complete Exotic Eradication	6 months
Conduct Baseline Monitoring	7 months
First Annual Monitoring Report	19 months
Second Annual Monitoring Report	31 months



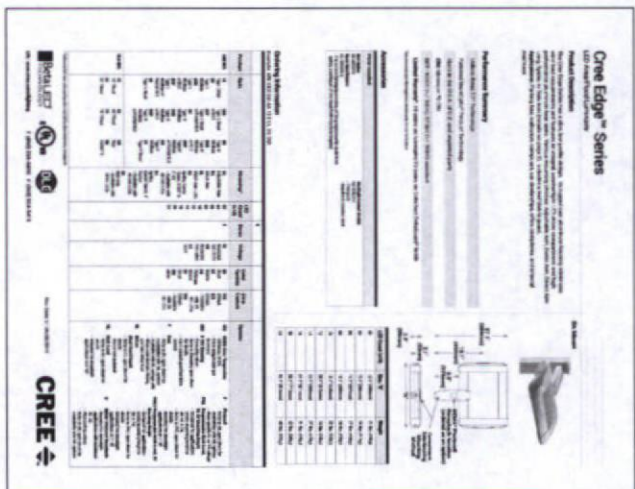
DE&C
Engineers
10000 W. US Highway 1
Stuart, Florida 34981
Tel: 888.333.3333
Fax: 888.333.3333
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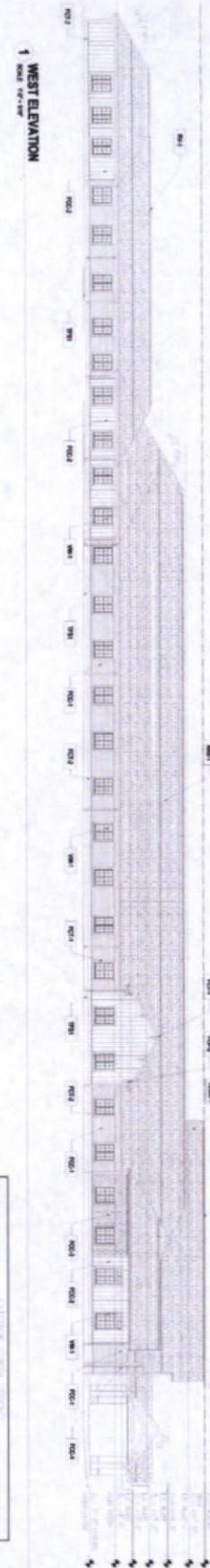
DATE	BY	REVISION
11/11/11	EDWARDS	1.0
11/11/11	EDWARDS	1.1
11/11/11	EDWARDS	1.2
11/11/11	EDWARDS	1.3
11/11/11	EDWARDS	1.4
11/11/11	EDWARDS	1.5
11/11/11	EDWARDS	1.6
11/11/11	EDWARDS	1.7
11/11/11	EDWARDS	1.8
11/11/11	EDWARDS	1.9
11/11/11	EDWARDS	2.0

CLARITY POINTE Stuart, Florida

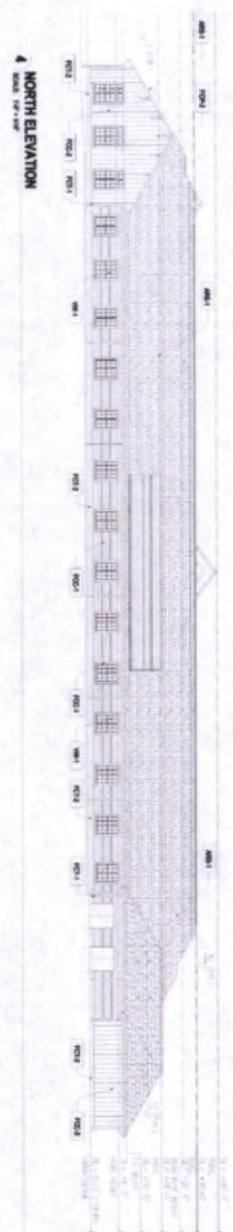
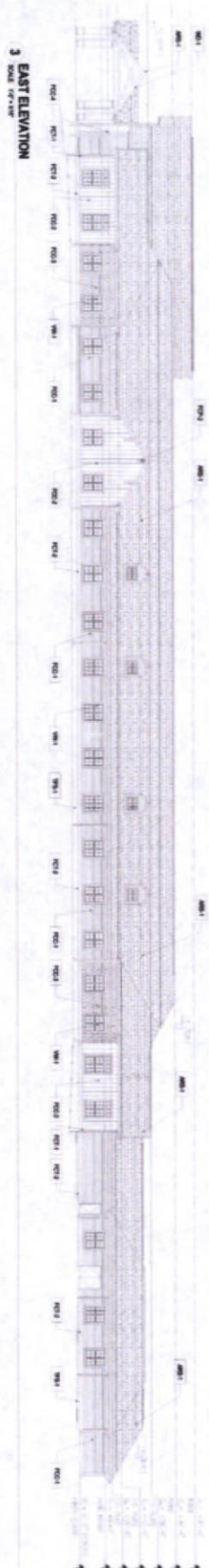
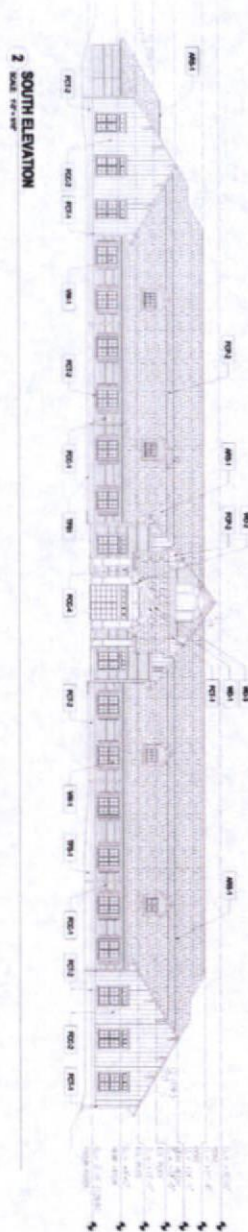
Colleur & Hearing
Landmark Architects
Environmental Consultants
1904 Commerce Lane
Stuart, Florida 34981
Tel: 888.333.3333 Fax: 888.333.3333
www.colleurandhearing.com



Calculation Summary						
Asset	Units	Age	Days	MTB	LogDays	Flexibility
DATA PROPERTY LINE						
INTERSECTION	13.20	3.5	7.0	0.8	4.0	14.00
WATER ACCESS ROAD	1.00	3.5	7.0	0.8	4.0	14.00
NORTH PROPERTY LINE						
INTERSECTION	0.05	0.5	0.0	N/A	N/A	N/A
BOOTH PROPERTY LINE	2.86	6.6	6.3	0.53	22.00	22.00
INTERSECTION	0.00	0.0	0.0	N/A	N/A	N/A
WATER ACCESS ROAD						
INTERSECTION	3.47	1.3	2.62	0.48	5.46	5.46
DATA PROPERTY LINE						
INTERSECTION	0.13	0.4	1.0	N/A	N/A	N/A



NO.	DATE	DESCRIPTION	BY	CHKD.
1	08/26/16	Initial Set	LEO	AD
2	08/26/16	Revised Set	LEO	AD
3	08/26/16	Final Set	LEO	AD
4	08/26/16	Final Set	LEO	AD
5	08/26/16	Final Set	LEO	AD
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99	08/26/16	Final Set	LEO	AD
100	08/26/16	Final Set	LEO	AD



PRIMED FIBER CEMENT BOARD
JAMES HARDIE BOARD AND BATTEN
COLOR SW 9130 - EVERGREEN FOG
PAINT 2

PRIMED FIBER CEMENT BOARD
JAMES HARDIE SMOOTH LAP SIDING
COLOR SW 6672 - MORNING SUN
PAINT 1

ARCHITECTURAL SHUTTERS
STYLE: OPEN LOUVER
COLOR SW 76188 - SHADE GROWN
PAINT 4

ARCHITECTURAL ROOF SHINGLE
CERTANTEED LANDMARK SERIES
MOJAVE TAN

PREFINISHED ALUMINUM GUTTER
STYLE: K
COLOR: SW 7005
PURE WHITE



ARCHITECTURAL ROOF SHINGLE
CERTANTEED LANDMARK SERIES
MOJAVE TAN



PRIMED FIBER CEMENT BOARD
JAMES HARDIE SMOOTH LAP SIDING
WITH 6" EXPOSURE
COLOR SW 6672 - MORNING SUN
PAINT 1



PRIMED FIBER CEMENT BOARD
JAMES HARDIE BOARD AND BATTEN
VERTICAL SIDING WITH 4" / 4" / 2" WIDE
BATTEN STRIPES AT 16" ON CENTER
COLOR SW 9130 - EVERGREEN FOG
PAINT 2



PRIMED FIBER CEMENT BOARD
JAMES HARDIE SHAKE RANDOM SQUARE
STAGGAED EDGE 7" EXPOSURE
COLOR SW 7667 - ZIRCON
PAINT 3



PRIMED FIBER CEMENT BOARD
JAMES HARDIE 4"x10" PANELS
COLOR SW 6672 - MORNING SUN
PAINT 1



PRIMED FIBER CEMENT BOARD
JAMES HARDIE TRIM
COLOR SW 7005 - PURE WHITE
PAINT 5



ARCHITECTURAL SHUTTERS
STYLE: OPEN LOUVER
COLOR SW 76188 - SHADE GROWN
PAINT 4



PRE-FINISHED 6" ALUMINUM GUTTER
STYLE: K
COLOR SW 7005
PURE WHITE



JAMES HARDIE TRIM 64"x12"
COLOR SW 7005 - PURE WHITE
PAINT 5

JAMES HARDIE TRIM 64"x6"
COLOR SW 7005 - PURE WHITE
PAINT 5

VINYL CLAD WINDOW
COLOR SW 7005 - PURE WHITE
PAINT 5

EXPOSED HEAVY TIMBER
WOOD TRUSSES

PAINT 2
'SHERWIN-WILLIAMS'
COLOR SW 9130
EVERGREEN FOG

EXPOSED HEAVY TIMBER
CONSTRUCTION

PAINT 1
'SHERWIN-WILLIAMS'
COLOR SW 6672
MORNING SUN



PAINT 5
'SHERWIN-WILLIAMS'
COLOR SW 7005
PURE WHITE



PAINT 4
'SHERWIN-WILLIAMS'
COLOR SW 6188
SAGE GROWN



PAINT 3
'SHERWIN-WILLIAMS'
COLOR SW 7667
ZIRCON



PAINT 2
'SHERWIN-WILLIAMS'
COLOR SW 9130
EVERGREEN FOG



PAINT 1
'SHERWIN-WILLIAMS'
COLOR SW 6672
MORNING SUN

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Specialty Painting & Color Consulting
Our Difference is Clear

Stuart
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SAMPLE COLOR BOARD
N.T.S.

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West Palm Beach, FL 33401-7403 US
Tel 561.688.2111 Fax 561.697.8040

LEO A DAILY

CLARITY POINTE OUTPARCEL DESIGN PRINCIPLES

- **MINIMUM SETBACKS FROM PUD BOUNDARY LINES**
 - o Northern boundary (along S.E. Indian Street) – 30 feet
 - o Eastern boundary (abutting Willoughby Crossroads) – 30 feet
 - o Southern boundary (abutting Preserve) – 10 feet to preserve
 - o Western boundary (abutting Clarity Pointe) – 25 feet building separation
 - o Minimum 10 feet setback to platted outparcel lot line
- **DEVELOPMENT STANDARDS**
 - o MAXIMUM LOT COVERAGE: 40%
 - o MINIMUM LOT SIZE: 1 ACRE
 - o MAXIMUM BUILDING HEIGHT: 2 STORIES OR 35 FEET
- **PARKING**
 - o All buildings shall comply with the City of Stuart's off-street parking standards.
 - o Provisions for shared parking may be employed if approved by the City of Stuart's traffic engineer.
- **MECHANICAL EQUIPMENT**
 - o All mechanical equipment shall be screened from public view. This screening or partial screening may be accomplished through the use of walls, trees, landscaping, or a combination thereof.
- **LANDSCAPING**
 - o Landscaping within parking areas shall comply with the City of Stuart's Landscape Code. All landscaped areas shall be irrigated in compliance with City's standards.
 - o Plantings at the foundation of buildings shall be used to complement the building's appearance, to blend the project with its surroundings, and to create an inviting entrance. At least one shade tree or palm cluster shall be installed for each 50 linear feet foundation planting area. The foundation planting area shall be at least ten feet deep unless the foundation planting area interferes with the intended use and function of the building.
- **LIGHTING**
 - o LED lighting with cut off luminaries shall be used for vehicular use areas.
 - o Maximum height of light poles shall be 20 feet.
 - o Decorative wall lighting shall be utilized on the building facades to provide character and architectural interest.
 - o Light levels shall meet the City of Stuart's Lighting code standards.
- **PEDESTRIAN CONNECTIVITY**
 - o All buildings within the PUD shall contain pedestrian sidewalk connections to the S.E. Indian Street.
 - o Sidewalks shall be a minimum width of five feet.

- Pedestrian crosswalks shall be provided where appropriate to facility a safe and effective means of walkability.
- Bicycle racks shall be provided in convenient locations throughout the PUD.
- The use of decorative pavers shall be encouraged to enhance pedestrian walkways and seating areas.

- **ARCHITECTURE**

- The first building constructed within the PUD shall establish the general architectural vernacular of the PUD.
- Compatible colors, materials, and architectural details shall be provided for each building to produce a harmonious blend of design.
- Buildings shall have architectural features and patterns that provide visual interest. Facades shall be designed to minimize the mass/scale where appropriate. Building wall offsets, including projections, recesses and changes in floor level shall be used to add architectural interest and variety, and to relieve the visual effect of blank walls or large areas of relatively plain appearance.
- The ends and center portions of buildings may be designed with distinct architectural features, such as corner towers, exaggerated recesses, color differentiation, material changes, or other special features that interact in a complementary manner with the surrounding buildings.
- Building facades shall be designed to be harmonious with their surroundings. This provisions should not be construed as creating look-alike buildings. Harmony shall be achieved through the appropriate use of scale, proportions, form, materials, texture, and color.
- Buildings shall relate to streets and public spaces by providing an ordered variety of entries, windows, indentations along public ways. Ground floors should have a high degree of transparency to encourage interaction between sidewalk activity and uses within the building. Buildings shall introduce a "human scale" in details and massing. The implementation of this guideline may take into consideration the specific use and function of the building. The design character of buildings shall avoid cluttered forms that have no apparent organizational system.
- Building exteriors should provide some shelter from the summer sun, where appropriate. Porticos, awnings, arcades, and overhanging eaves are particularly appropriate at pedestrian walkways adjacent to the building.
- Building massing and changing roof forms may be used to emphasize the location of building entries. For example, greater height can be used to accentuate entries in the form of tower elements, tall voids, or a central building mass.
- Buildings or structures that are part of an unbuilt phase shall have character and design compatible with the positive design features of existing buildings to the maximum extent feasible.
- Buildings shall reflect a continuity of treatment. Examples of this include, but are not limited to, the following:
 - Maintaining the building scale or by gradual changes in form;
 - Maintaining front setbacks at the build-to-line.
 - Creating horizontal base courses;
 - Extending horizontal lines of fenestration to create banding;
 - Echoing architectural styles and details, design themes, building materials and colors found in surrounding buildings.



○ Preferred building exterior wall finishes include:

- Stucco
- Stone (including pre-cast concrete with stone appearance)
- Wood or simulated wood (in cementitious format).
- EIFS (Exterior Installation & Finishing Systems), within the first seven feet above finished first floor in locations other than where pedestrians may have contact with building or at upper level public exterior walkways, etc.
- Architectural pre-cast concrete.



○ Preferred Roof Styles

- Mansard roofs
 - Mansard roofs are discouraged.
- Roof treatments

- Variations in roof lines should be used to add interest to and reduce the mass of buildings. Roof features should be in scale with the building's mass and compliment the character of adjoining and/or adjacent buildings and neighborhoods. Roofing material should be constructed of durable high-quality material in order to enhance the appearance and attractiveness of the community.
- Roof Types
 - Gable Roof
 - Flat Roof with parapet
 - Hip Roof
- Preferred roof materials for pitched roofs:
 - Glazed or unglazed ceramic tile
 - Concrete or clay tile
 - Pre-finished or natural standing metal seam roofing panels

City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Cherie White
City Clerk

PHONE 772-288-5306
FAX (772) 288-5305
Email cwhite@ci.stuart.fl.us

February 24, 2017

Clerk of the Circuit Court
Att: Recording
P.O. Box 9016
Stuart, Fl. 34995

RE: PLEASE RECORD:
Ordinance 2340-2017 Clarity Pointe RPUD

Please record the above named documents into the public records of Martin County, and
Upon recordation, please return the original documents back to my attention inter-office
mail.

Should you have any questions regarding this appointment please feel free to contact me at
772-288-5306.

Thank you,

Cherie White, MMC

Cherie White, MMC
City Clerk
Enc.

**MINUTES
LOCAL PLANNING AGENCY OF THE CITY OF STUART
MARCH 14, 2024
AT 5:30 PM
COMMISSION CHAMBERS
121 SW FLAGLER AVE.
STUART, FLORIDA 34994**

LOCAL PLANNING AGENCY

**Chair - Kelly Laurine
Vice Chair - Sean Forbes
Board Member - Margaret Bromfield
Board Member - William Mathers
Board Member - Deana Peterson
Board Member - Ryan Strom
Board Member - VACANT
Ex Officio Board Member - Mark Sechrist**

ADMINISTRATIVE

**Development Director - Jodi Nentwick-Kugler
Board Secretary - Susej T. Meleqi**

CALL TO ORDER

5:30 PM

ROLL CALL

PRESENT: Vice Chair Forbes, Board Member Bromfield, Board Member Peterson, Board Member Strom

ABSENT: Chair Laurine, Board Member Mathers

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

5:32 PM MOTION: Approve.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

Motion approved unanimously.

Michael Mortell, City Manager swore in Deana Peterson. Board Member Peterson took her Oath for the LPA Board.

APPROVAL OF MINUTES

1. APPROVAL OF 02/08/2024 LPA MINUTES

5:34 PM MOTION: Approve.

MOVED BY: Ryan Strom

SECONDED BY: Margaret Bromfield

Motion approved unanimously.

COMMENTS FROM THE PUBLIC (Non-Agenda Related) (3 Minutes Max.)

None.

COMMENTS BY BOARD MEMBERS (Non-Agenda Items)

Vice Chair Forbes

- Spoke on the growth in the City and what growth truly means.

ACTION ITEMS

2. **APPLICANT REQUESTED CONTINUANCE TO A DATE CERTAIN OF APRIL 11, 2024 - THIS MATTER WILL NOT BE HEARD BY THE BOARD ON MARCH 14, 2024**

EDEN / MAR-STUART CPUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT GENERALLY LOCATED AT 3970 SE FEDERAL HIGHWAY (LEGISLATIVE):

ORDINANCE No. 2527-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, FOR A SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT AS DEFINED IN F.S. §163.3187; AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 22.76-ACRE PARCEL FROM COMMERCIAL TO THE NEIGHBORHOOD SPECIAL DISTRICT FUTURE LAND USE DESIGNATION, FOR A MAXIMUM RESIDENTIAL DENSITY OF 7.64 DWELLING UNITS PER ACRE; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

5:40 PM MOTION: Approval to continue the item.

MOVED BY: Ryan Strom

SECONDED BY: Deana Peterson

Motion approved unanimously.

3. **APPLICANT REQUESTED CONTINUANCE TO A DATE CERTAIN OF APRIL 11, 2024 - THIS MATTER WILL NOT BE HEARD BY THE BOARD ON MARCH 14, 2024**

EDEN / MAR-STUART CPUD - MAJOR COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) AMENDMENT GENERALLY LOCATED AT 3970 SE

FEDERAL HIGHWAY (QJ):

ORDINANCE No. 2528-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, FOR A MAJOR CPUD AMENDMENT TO THE 12.31-ACRE MAR-STUART (MARKET PLACE) COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) LOCATED ON THE WEST SIDE OF SE FEDERAL HIGHWAY, TO INCORPORATE A 22.76-ACRE PARCEL WITHIN THE OVERALL MAR-STUART CPUD FOR A TOTAL LAND AREA OF 35.07-ACRES; AND ALLOWING FOR A FIVE (5) PHASE DEVELOPMENT FOR THREE (3) ADDITIONAL AUTOMOBILE DEALERSHIPS, ONE (1) DEALERSHIP CARWASH, A TWO-STORY PARKING DECK, TWO (2) 8,800 SQUARE FOOT ONE-STORY COMMERCIAL BUILDINGS, A 2,500 SQUARE FOOT ONE-STORY RESTAURANT/DRIVE THROUGH, AND THREE (3) FOUR-STORY BUILDINGS TO ACCOMMODATE 268-UNIT MULTI-FAMILY UNITS, FOR A MAXIMUM RESIDENTIAL DENSITY OF 7.64 DWELLING UNITS PER ACRE; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR A PHASED DEVELOPMENT SCHEDULE; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

5:40 PM MOTION: Approval to continue the item.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

Motion approved unanimously.

4. CLARITY POINTE PUD - SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT LOCATED AT 500 SE INDIAN STREET (LEGISLATIVE)(RC):

ORDINANCE No. 2529-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REQUESTS FOR A SMALL-SCALE COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT AS DEFINED IN F.S.§163.3187; AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP FOR AN APPROXIMATE 9.46-ACRE PARCELS OF LAND FROM MULTI-FAMILY RESIDENTIAL TO THE COMMERCIAL FUTURE LAND USE DESIGNATION; AMENDING THE FUTURE LAND USE MAP; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND OTHER PURPOSES

Jodi Nentwick Kugler, Development Director, presented the projects notice, location, site history, adjacent land use & zoning, existing future land use, proposed future land use, and maximum build out.

Board Members had several questions. City Manager, Michael Mortell responded.

Brad Curry, representative for the project, introduced himself and the applicant, Jason Ackner.

PUBLIC COMMENT:

1. Barbara Petitt - SE Willoughby Terrace; Had several questions regarding the project and expressed her concerns about the project.
2. Sean Reed - SW 6th St; Spoke on the land use code of the City vs the County.
3. Rosi Shepard - SW North Carolina; Spoke in favor of the land use change.
4. Christina Tucker - SE Indian St; Stated she was the owner of Coastal detox and expressed her concerns on the project.

5:52 PM MOTION: Approve.

MOVED BY: Margaret Bromfield

SECONDED BY: Ryan Strom

VOTE: MOTION PASSES 3/1.

YES: Margaret Bromfield, Sean Forbes, Ryan Strom

NO: Deana Peterson

5. CLARITY POINTE PUD - REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) ZONING DESIGNATION LOCATED AT 500 SE INDIAN STREET (QJ)(RC):

ORDINANCE No. 2530-2024; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REQUESTING TO REZONE FROM THE CITY OF STUART OFFICIAL ZONING ATLAS FROM RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD) TO THE MIXED-USE PLANNED UNIT DEVELOPMENT (MXPUD) DESIGNATION FOR APPROXIMATELY 9.46 ACRE PARCELS OF LAND LOCATED ON THE SOUTH SIDE OF SE INDIAN STREET AND APPROXIMATELY 540 FEET EAST OF KANNER HIGHWAY, TO CONVERT THE EXISTING 84-BED ASSISTED LIVING FACILITY (ALF) WITH MEMORY CARE KNOWN AS CLARITY POINTE TO ALLOW FOR AN INPATIENT PRIMARY MENTAL HEALTH AND RESIDENTIAL DRUG AND ALCOHOL FACILITY WITH MEDICAL DETOX; PROVIDING FOR MASTER SITE PLAN APPROVAL; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR SPECIFIED COMMERCIAL USES; PROVIDING FOR SIGNAGE REQUIREMENTS; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND OTHER PURPOSES.

Ms. Kugler presented the project's public notice, location, existing zoning district, mixed use planned unit development, zoning and future land use compatibility, 2016 approval site plan, wetland mitigation, and staff recommended approval to the City Commission.

Board Members asked staff questions about parking and traffic analysis.

Mr. Curry presented the project and responded to the Board Members questions and provided a brief background on the applicant.

Jason Ackner, Applicant, spoke on the project and what the facility would entail.

Board Members entered into questions and answer with the applicant.

PUBLIC COMMENT:

1. Ross Tucker - SE Indian St; Stated he believes that Mr. Ackner is doing his best but stated he believes the numbers provided are not accurate.
2. Christina Tucker - SE Indian St; Spoke on the amount of parking spaces and the number of beds within this facility.

Board Members and applicant continued discussion.

7:09 PM Vice Chair Forbes passed gavel to Board Member Strom

7:09 PM MOTION: Approve.
MOVED BY: Margaret Bromfield
SECONDED BY: Sean Forbes
VOTE: MOTION FAILED 2/2.
YES: Margaret Bromfield, Sean Forbes
NO: Deana Peterson, Ryan Strom

STAFF UPDATE

ADJOURNMENT

7:14 PM

Susej T. Meleqi, Board Secretary

Kelly Laurine, Chair

**Minutes to be approved at the LPA
Meeting this 9th day of May, 2024.**