



July 28, 2021

VIA EMAIL ONLY

City of Stuart Development Department
Attn: Mr. Tom Reetz, Senior Planner
121 SW Flagler Avenue
Stuart, FL 34994

Re: Kanner CPUD

Dear Mr. Reetz:

Pursuant to the Stipulation Regarding Quasi-Judicial Hearing for Second Reading, executed by me and the intervenors, please find enclosed a Memorandum, prepared by Mr. Edward R. Weinberg, of EW Consultants, Inc., regarding the listed vegetation species on the Kanner CPUD site.

We are hereby requesting that the attached Memorandum from Mr. Weinberg be submitted as part of the recorded and included as part of the documents submitted for the August 9, 2021, Second Reading before the City of Stuart City Commissioners.

Please do not hesitate to contact me should you have any questions or require any additional information regarding this request.

Sincerely,

Robert S. Raynes, Jr.

Enclosure

cc: client (via email)
Kevin Freeman, City of Stuart Development Director (via email)
David Dyess, City of Stuart Manager (via email)
Michael Mortell, Esq., City of Stuart Attorney (via email)
Linda Kay Richards, (via email)
Virginia P. Sherlock, Esq. (via email)
Brian A. DiVentura (via email)

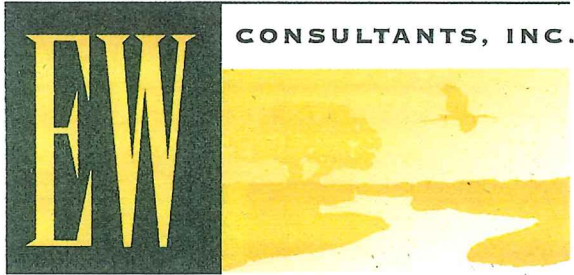
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ACTIVE:13722318.1

EW Consultants, Inc.

Natural Resource Management, Wetland, and Environmental Permitting Services



MEMORANDUM

TO: Robert S. Raynes

FROM: Ed Weinberg Edward R.
 Weinberg

Digitally signed by
Edward R. Weinberg
Date: 2021.07.22
12:08:45 -04'00'

DATE: July 22, 2021

RE: Kanner CPUD; Listed Vegetation Species

The following memorandum is being provided in response to comments and/or questions provided to the City of Stuart by the Intervener, Linda Kay Richards in relation to “protected” species of vegetation on the Kanner CPUD site. Rather than responding to specific assertions in the June 16, 2021 correspondence from the Intervener to the City Commission, this memorandum provides background as to the regulatory status of listed vegetation species as well as site specific information in that regard.

Listed vegetation species (as contrasted with listed wildlife species) have a specific and unique regulatory framework, which is described in detail as follows.

Federal Regulatory Framework -

At the Federal level, Section 9 of the Endangered Species Act (ESA) provides legal protection for rare plants, under limited and specific circumstances. On Federal lands, it is illegal to “remove and reduce to possession” or “maliciously damage or destroy” any listed plant. The Kanner CPUD property is not “Federal lands” and thus this provision does not apply.

On private lands (as is the case with the Kanner CPUD property), the provisions of the ESA (specifically 16 U.S.C. §1538(a)(2)(B)) make it illegal to “*remove, cut, dig up, or damage or destroy*” a listed plant “*in knowing violation of any law or regulation of any state.*”. Note that this provision defers to laws or regulations of the State of Florida. As such, the Federal ESA does not impose any restrictions, aside from those in Florida law, regarding the removal or destruction of listed plants on private property.

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Although important for background purposes, any potential Federal restrictions are not applicable, as several years of multiple site reconnaissance reviews, including a systematic survey of the site most recently in July 2021, did not find any Federally listed Endangered or Threatened plant species to be present.

State of Florida Regulatory Framework -

At the state level, legal protection for native plant species are provided by the Preservation of Native Flora of Florida Statute (PNFFS), F.S. Section 581.185, and associated Endangered Plant Advisory Council statute, F.S. §581.186. The stated goal of the PNFFS is to “**protect the native flora from unlawful harvesting on both public and privately owned lands**” and prevent “**wanton exploitation or destruction of native plant populations**”.

Three categories of protected native plant species are defined by the PNFFS, which include “commercially exploited”, “Threatened”, and “Endangered”. These three categories and the species that fall within them are listed in the “Regulated Plant Index” promulgated by the State of Florida. By reference, and specific listing of those species known to occur in Florida, the Regulated Plant Index includes all plants listed as endangered or threatened under Section 4 of the Federal Endangered Species Act (1973 as amended). As previously stated, no Federally listed Endangered or Threatened plant species have been found to be present on the Kanner CPUD property.

The Regulated Plant Index includes additional species under the three categories as stated above. Although previously observed during multiple site reviews, a systematic survey of the site conducted in July 2021 catalogued the occurrence of several species listed in the Regulated Plant Index, which are specified by category as follows.

State Endangered –

Giant Wild Pine (*Tillandsia utriculata*)
Florida Royal Palm (*Roystonea regia*)

State Threatened –

Large flower False Rosemary (*Conradina grandiflora*)
Giant Sword Fern (*Nephrolepis biserrata*)

State Commercially Exploited –

Saw Palmetto (*Serenoa repens*)
Nodding Club-Moss (*Lycopodiella cernua*)
Royal Fern (*Osmunda regalis*)

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The PNFFS specifies that the harvest or willful destruction of regulated plants requires obtaining the written permission of the landowner or legal representative of the landowner and in some cases, a permit from the Florida Department of Agriculture and Consumer Services (FDACS) for transporting plants for the purpose of “sale, selling, or offering for sale”. The PNFFS provides an exemption under F.S. Section 581.185(8)(b) stating that ***“No provision of this section shall apply to: [...] The clearing or removal of regulated plants from a canal, ditch, survey line, building site, or road or other right-of-way by the landowner or his or her agent.”***

Under this explicit exemption, a landowner clearing their private property for permitted development is not restricted from removal of regulated plants. The landowner’s actions do not require further authorization from the Florida Department of Agriculture and Consumer Services (FDACS) and are presumed to be in compliance with the provisions of the PNFFS.

This exemption was further clarified in 1997 when the legislature added the following clause under F.S. Section 581.185(12) :

(12) REGULATED PLANT INDEX. — The Regulated Plant Index is to be used solely to restrict unlawful harvesting of native flora without the authorization of the landowner. The Regulated Plant Index is not to be used to regulate construction or other land alteration activities on any property.

In summary, the State of Florida regulates unlawful harvest of protected vegetation species, but specifically does not regulate activities of landowners regarding listed vegetation species on private property.

City of Stuart Regulatory Framework –

The City of Stuart Comprehensive Plan, under Objective A.6. Wildlife Protection, mentions protection of endangered and threatened plant and animal populations and goes on to cite Federal and State protections. The limitations of existing Federal and State protections have been fully summarized above.

Neither the Comprehensive Plan nor the Land Development Code include specific requirements for preservation of listed plant species on private property beyond those allowed for by State statute and rules.

Summary –

Private landowners in Florida are not restricted in their disposition of listed plant species within their property. Further, Florida Statute prohibits regulation of construction or land alteration based on occurrence of plants listed in the Regulated Plant Index. As such, although there are occurrences of State listed vegetation species on the Kanner CPUD site, their disposition is at the discretion of the property owner.