

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 259 Martin County  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee; Magar  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Banner	Miller
2) Ways & Means Committee	16 Y, 0 N	Schmiege	Langston
3) Government Accountability Committee			

### SUMMARY ANALYSIS

HB 259 creates a municipality to be known as the Village of Indiantown in Martin County and sets out the Village's charter. The charter provides the following information, authority, powers, and duties of the Village:

- Corporate name; purpose of the charter; creation and establishment of the Village of Indiantown;
- Powers of the Village;
- A council-manager form of government;
- Village council, mayor, and vice mayor; powers and duties, composition of the council, eligibility, terms, compensation, council meetings, vacancies, forfeitures, judge of qualifications, and investigations;
- Administration by Village manager, provision for Village attorney, departments, personnel, planning;
- Ordinances and resolutions;
- Financial management, including budget administration and amendment; capital program; public records; annual audits; shortfalls;
- Nominations and qualifications of council members; nonpartisan elections; five at large council seats;
- Powers of initiative and referendum;
- Amendments to the charter; severability; and
- Referendum election; initial council election; transition provisions; eligibility for state-shared revenues; local revenue sources; local option gas tax revenues; contractual services and facilities, including existing solid waste contracts; municipal services district.

The initial Economic Impact Statement (EIS) filed on January 17, 2017, projected combined local and state revenues for Indiantown with no projected costs of funding the City government or impacts to Martin County. The revised EIS filed on February 13, 2017, identifies revenue increases to Indiantown, in addition to projected local and state revenues. The EIS also provides projected revenue decreases for Martin County and an estimated cost for the administration of the Village government and the Bridge Loan Payment. The proponents argue that existing funds are being redirected to the municipality, resulting in no additional costs to residents. However, based on all the information provided by the proponents, including no cost estimate for law enforcement services, thus requiring the assumption that the municipality must bear the full cost of law enforcement, an initial ad valorem taxation rate of 4.3228 mills appears to be required to be financially feasible.

This act shall take effect only upon its approval by a majority vote of those qualified electors residing within the corporate limits of the proposed Village of Indiantown, except for provisions regarding the referendum election, which will take effect upon becoming a law.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0259d.WMC

DATE: 4/5/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

By adopting the statutory requirements in chapter 165, F.S., the Legislature carefully and clearly articulated the standards and minimum requirements for any community, no matter what its circumstances, to seek municipal incorporation. If a community meets the minimum factual conditions and submits a plan demonstrating a willingness to fund proposed government services in a manner that is financially responsible not only to the residents of the community but to neighboring governments and the state, the proposed municipal incorporation may be feasible.

#### **Present Situation**

##### Provisions of Law Controlling Municipal Incorporation

###### *Constitutional Provisions*

The Florida Constitution states municipalities<sup>1</sup> may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.<sup>2</sup> The power to tax is granted only by general law.<sup>3</sup> The legislative body of a municipal government is constitutionally required to be elected.<sup>4</sup>

###### *Municipal Home Rule Powers Act*

The Municipal Home Rule Powers Act (Powers Act)<sup>5</sup> acknowledges the constitutional grant of municipal powers and authorizations. Nothing in the Powers Act may be construed to permit any change in a special law or municipal charter without approval by referendum<sup>6</sup> if the change affects any of the following:<sup>7</sup>

- The exercise of extraterritorial powers;
- An area that includes lands within and without a municipality;
- The creation or existence of a municipality;
- The terms of elected officers and their manner of election, except for the selection of election dates and qualifying periods for candidates and for changes in terms necessitated by change in election dates;
- The distribution of powers among elected officers;
- Matters prescribed by charter relating to appointive boards;
- Any change in form of government; or
- Any rights of municipal employees.

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<sup>1</sup> Art. VIII, s. 2(a), Fla. Const. A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term “municipality” can be used interchangeably with the terms “city,” “town,” and “village.”

<sup>2</sup> Art. VIII, s. 2(b), Fla. Const.

<sup>3</sup> Art. VII, s. 9(a), Fla. Const.

<sup>4</sup> Art. VIII, s. 2(b), Fla. Const.

<sup>5</sup> Chapter 166, F.S.

<sup>6</sup> As provided in s. 166.031, F.S.

<sup>7</sup> Section 166.021(4), F.S.

## *Formation of Municipalities Act*

Florida law governing the formation and dissolution of municipal governments is found in the Formation of Municipalities Act (Formation Act).<sup>8</sup> The stated purpose of the Formation Act is to provide standards, direction, and procedures for the incorporation, merger, and dissolution of municipalities so as to achieve the following:

- Orderly patterns of urban growth and land use;
- Adequate quality and quantity of local public services;
- Financial integrity of municipalities;
- The elimination or reduction of avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- Equity in the financing of municipal services.

Under the Formation Act, a municipal government may be established where no such government exists only if the Legislature adopts the municipal charter by special act after determining the appropriate standards have been met.<sup>9</sup>

### Physical Requirements for Municipal Incorporation<sup>10</sup>

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:

- Be compact, contiguous, and amenable to separate municipal government.
- Have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.
- Have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
- Have a minimum distance of at least two miles from the boundaries of an existing municipality within the county. Alternatively, it must have an extraordinary natural boundary that requires separate municipal governments.
- Have a proposed municipal charter that prescribes the form of government and clearly defines the responsibility for legislative and executive functions, and does not prohibit the legislative body from exercising its power to levy any tax authorized by the Florida Constitution or general law.
- Have a plan for incorporation honoring existing contracts for solid waste collection services in the affected areas for the shorter of five years or the remainder of the contract term.<sup>11</sup>

### Procedural Requirements for Municipal Incorporation

#### *Special Act*

The Legislature has chosen to create the charter for a new municipality only by special act.<sup>12</sup> Municipal incorporations are initiated as local bills, a type of special act. A local bill is legislation relating to (or designed to operate only in) a specifically indicated part of the state or purporting to operate within classified territory when such classification is not permissible or legal in a general bill.<sup>13</sup> To incorporate

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<sup>8</sup> Chapter 165, F.S.

<sup>9</sup> An exception to this principle is the home rule authority of Miami-Dade County, where the board of county commissioners has been granted the exclusive power to create municipalities within that county through the Florida Constitution. *See* s. 165.022, F.S., and Art. VIII, s. 6(e), Fla. Const. Adopted in 1957, the Miami-Dade County Home Rule Charter provides for the creation of new municipalities at Art. 6, s. 6.05.

<sup>10</sup> Section 165.061, F.S.

<sup>11</sup> In accordance with Art. I, s. 10, Fla. Const.

<sup>12</sup> Section 165.041(1)(a), F.S.

<sup>13</sup> *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla.1934).

a municipality, the special act must include a proposed municipal charter prescribing the form of government and clearly defining the legislative and executive functions of city government. The special act may not prohibit or limit tax levies otherwise authorized by law.<sup>14</sup>

Unless conditioned to become effective only upon approval by qualified electors, no special act may be passed without prior publication of intent to seek such enactment.<sup>15</sup> The notice of intent to file must be published in the manner provided by general law.<sup>16</sup> Because of the impact on local residents of creating a new form of local government, the Legislature generally requires a special act incorporating a municipality to be subject to a referendum. A bill proposing creation of a municipality will be reviewed based on the statutory standards for municipal incorporation.<sup>17</sup>

### *Local Bill Process*

As a local bill, a proposed municipal incorporation also must meet the Local Bill Policy of the House, which provides that no local bill may be considered by the Local, Federal and Veterans Affairs Subcommittee – or other House committees or subcommittees – prior to the receipt of an original Economic Impact Statement and a Local Bill Certification Form.<sup>18</sup> The Economic Impact Statement should assess the cost of implementation, state who will bear such cost, and identify who will benefit from the passage of the special act. The Local Bill Certification Form certifies the purpose of the bill cannot be accomplished locally, a public hearing has been held, all statutory and constitutional requirements have been met, and a majority of the local legislative delegation<sup>19</sup> approves the bill.

### *Feasibility Study*

A feasibility study and a local bill proposing the municipal government charter must be submitted for consideration of incorporation. The feasibility study is a survey of the proposed area to be incorporated. The purpose of the study is to enable the Legislature to determine whether (1) the area meets the statutory requirements for incorporation, and (2) incorporation is financially feasible. The feasibility study must be completed and submitted to the Legislature no later than the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted.<sup>20</sup>

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
  - A list of the current land use designations applied to the subject area in the county comprehensive plan.
  - A list of the current county zoning designations applied to the subject area.
  - A general statement of present land use characteristics of the area.
  - A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

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<sup>14</sup> Section 165.061(1)(e)2., F.S.

<sup>15</sup> Art. III, s. 10, Fla. Const.

<sup>16</sup> Section 11.02, F.S., specifies the publication of notice must occur one time, at least 30 days prior to introduction of the local bill in the Legislature.

<sup>17</sup> Section 165.061, F.S.

<sup>18</sup> Florida House of Representatives, Local, Federal & Veterans Affairs Subcommittee, 2017-2018 Local Bill Policies and Procedures Manual.

<sup>19</sup> A legislative delegation is a group of legislators representing the same county.

<sup>20</sup> Section 165.041(1)(b), F.S. For any proposed incorporations to be considered during the 2017 Legislative Session, this deadline fell on September 5, 2016.

- A list of all public agencies, such as local governments, school districts, and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
- A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.
  - A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
- Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation in s. 165.061, F.S.

In counties that have adopted a municipal overlay for municipal incorporation,<sup>21</sup> such information must also be submitted to the Legislature. This information should be used to evaluate the feasibility of a proposed municipal incorporation in the geographic area.

#### The Proposed Village of Indiantown<sup>22</sup>

Indiantown is a well-established community dating back to the early nineteenth century. Indiantown is located in an unincorporated part of western Martin County roughly 15 miles west of Stuart, 8 miles north of the Palm Beach County line, and bordered by the St. Lucie Canal. According to the 2010 U.S. Census, the population of this Census Designated Place was 6,083.

Industry and agriculture have played an important role in shaping Indiantown. They continue to be an important presence in the community, most notably the Florida Power and Light electric generating plant. Indiantown is also home to many former migrant workers. The area also hosts the world's first hybrid solar energy facility, an advanced fiber optic network, a marine industry, and Payson Park, a horse racing facility.

Redevelopment efforts in Indiantown have been ongoing, beginning with a 1997 study focused on the need and issues to expand Indiantown's middle class. In 2000, the Treasure Coast Regional Planning Council conducted a design workshop and issued a report related to the Booker Park area of Indiantown. Additionally, the Indiantown Economic Development Committee completed a survey and compiled a list of projects and issues important to the future planning of the community. Martin County has designated Indiantown as a Community Redevelopment Area (CRA)<sup>23</sup> and a Community Redevelopment Plan (CRP) is in place. The CRP is an important component of the county's "2020 Vision for a Sustainable Martin County," which encourages the creation of more livable, mixed use communities within the existing urban service districts.

<sup>21</sup> Pursuant to s. 163.3217, F.S.

<sup>22</sup> Houston Cuozzo Group, Inc., *Indiantown Community Redevelopment Plan, Prepared for Martin County Community Redevelopment Agency and the Indiantown Neighborhood Advisory Committee*, available at [https://www.martin.fl.us/sites/default/files/meta\\_page\\_files/CDD-CRA-Indiantown-CRA-Plan-05-2015.pdf](https://www.martin.fl.us/sites/default/files/meta_page_files/CDD-CRA-Indiantown-CRA-Plan-05-2015.pdf).

<sup>23</sup> The entity is known as the Indiantown Community Development District.

## Feasibility of the Proposed Village of Indiantown

This section examines whether the proposed village meets the statutory criteria for the form and structure of municipal government and demonstrates sufficient fiscal integrity for self-governance.

The proponents of municipal incorporation submitted their feasibility study addressing each element required by statute<sup>24</sup> in August 2016. Upon review by staff, the study was found to contain a number of deficiencies. Evaluations of the study were also requested from the Departments of Revenue (DOR)<sup>25</sup> and of Economic Opportunity (DEO)<sup>26</sup> and from the Office of Economic and Demographic Research (EDR).<sup>27</sup>

Correspondence between staff and the proponents began in September 2016 with a letter from staff outlining the deficiencies noted in the 2016 Study. Proponents provided a response to that letter in November 2016. The proponent's response also contained a revision to the area proposed for incorporation that removed a parcel from the proposed area.<sup>28</sup>

The proponents submitted an Economic Impact Statement (EIS) in January 2017. Upon review, staff noted this initial EIS was inconsistent with data provided in the 2016 Study. A response submitted by the proponents<sup>29</sup> indicated that the EIS was based on more recent data that was not available at the time the 2016 Study was completed. The EIS also accounted for the revision to the area proposed for incorporation.

The proponents submitted a revised feasibility study in February 2017.<sup>30</sup> Upon review, staff determined that several significant deficiencies remained, most specifically the financial feasibility of the proposed municipality when accounting for all necessary community services, including but not limited to, law enforcement. Correspondence between staff and the proponents regarding these issues occurred on February 15, March 6, March 10, and March 14, 2017.

A compilation of how each element is addressed in the 2016 Study, the Revised Study, the evaluations conducted by DOR, DEO and EDR, and subsequent correspondence with the proponents are included below.

### *Meeting the Statutory Criteria for Municipal Incorporation*

#### Section 165.041(1)(b)1., F.S. – Location and Boundaries

#### ***The location of territory subject to boundary change and a map of the area which identifies the proposed change.***

The 2016 Study provides a full legal description of the area proposed for incorporation, recited at lines 103-162 of the bill, together with boundary map. A copy of the general boundary map is attached to this analysis as Appendix B.

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<sup>24</sup> BJM Consulting, Inc., *Village of Indiantown Incorporation Feasibility Study*. (August 2016) (herein 2016 Study). *See also ss.* 165.041(1)(b) & 165.061(1), F.S.

<sup>25</sup> DOR Memorandum on Proposed Incorporation – Village of Indiantown (12/2/2016) (herein DOR 2016 Review)

<sup>26</sup> DEO, Review of Proposed Village of Indiantown Municipal Incorporation (12/2/2016) (herein DEO 2016 Review)

<sup>27</sup> Office of Economic and Demographic Research, Letter to Local and Federal Affairs Committee (12/5/2016) (herein EDR 2016 Review)

<sup>28</sup> The response submitted by the proponents indicated the area known as Little Ranch had been removed, resulting in a decrease to taxable value and reducing the proposed population from 5,717 to 5,457. The response did not indicate any revision to the proposed acreage being incorporated. A revised map was provided. The November email to which the response was attached stated a revised feasibility study would be submitted for review by staff and reviewing agencies. A revised feasibility study finally was submitted on February 13, 2017.

<sup>29</sup> The February 2017 letter response submitted by the proponents reaffirmed the intent to submit a revised feasibility study.

<sup>30</sup> BJM Consulting, Inc., *Village of Indiantown Incorporation Feasibility Study* (February 2017) (herein Revised Study).

DEO and EDR concluded the 2016 Study adequately addressed this requirement and DOR had no comment.

A revised map of the area proposed for incorporation was provided reflecting the removal of the area known as Little Ranch by the proponents in November 2016.

Section 165.041(1)(b)2., F.S. – Major Reasons for Boundary Change

***The major reasons for proposing the boundary change.***

The 2016 Study states the area seeks greater control to enhance the residential sector by expanding housing options, enhancing economic development opportunities and building a community centered plan to address future needs of the area residents.

DEO concluded the 2016 Study adequately addressed this requirement, EDR found no significant issue, and DOR had no comment.

Section 165.041(1)(b)3.a.-d., F.S. – Land Use, Zoning Designations

***a. A list of the current land use designations applied to the subject area in the county comprehensive plan.***

***b. A list of the current county zoning designations applied to the subject area.***

***c. A general statement of present land use characteristics of the area.***

***d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.***

The 2016 Study indicates the area has land designated as Industrial, Commercial, Agricultural, Residential and Utility. The current zoning map included as Exhibit 5 of the Study identifies zoning categories (i.e., A-2, AG-20A, etc), however no definitions of these categories is included. The Study also indicates that as of July 31, 2016, no new development is planned in the proposed area of incorporation.

DEO concluded that a general statement of present land use characteristics was adequately included but noted the following deficiencies for each of the other requirements of this section:

- The maps and information regarding the current land use designations were presented on two black and white maps with illegible text. Furthermore, the total land area in the future land use map is 8,830.10 acres, as compared to 9,397.50 acres identified in the 2016 Study. There is no explanation of this discrepancy.
- The future land use and current zoning maps include an abbreviated list of 15 land use designations and 36 zoning categories, respectively. Neither map provides explanations or descriptions of these abbreviations.
- Despite the projection of future growth in the five year revenue and expense forecast, DEO indicated no confirmation of plans for new development planning according to the Martin County Future Land Use Map. There is no explanation of this inconsistency in the 2016 Study.

EDR deferred to DEO's evaluation and DOR had no comment.

Section 165.041(1)(b)4., F.S. – Public Entities Currently Within the Incorporation Area

***A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.***

The 2016 Study discusses county government entities, courts with jurisdiction over the area proposed for incorporation in Martin County, the Martin County School District, the Indiantown Community

Development District and the Martin Soil and Water Conservation District. The study indicates no initial impact on these districts due to incorporation, with the exception of the Indiantown Community Development District which could come under the control of the new town if agreed to by the new Village and County.

DEO indicated about the Study's indication that the Martin County Community Redevelopment Agency (CRA) would remain under the direction of the County until a decision is made by the new municipal government to change it by negotiating to dissolve or assume authority. In follow-up correspondence, the proponents clarified that the Study intended to reference the Indiantown Community Development District. As a result, DEO's review was based on inaccurate information as presented in the 2016 Study.

EDR concluded the list in the 2016 Study and correspondence appeared complete and adequately addressed this requirement. DOR had no comment.

Section 165.041(1)(b)5., F.S. – Current Services and Costs

***A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.***

The 2016 Study indicates that Martin County is currently providing the maintenance of right-of-ways, parks, all development services, code enforcement, and other general governmental services to Indiantown. Water and sewer services are being provided by the Indiantown Company, Inc., transportation by the Martin County MPO, fire protection by the Martin County Fire & Rescue through a MSTU, law enforcement by the Martin County Sheriff's Department, and emergency medical services by Martin County EMS. Private sector companies provide power (FPL), phone (ITS Telecommunication Systems), solid waste hauling and disposal (Waste Management), and natural gas (FPUC).

The 2016 Study provides the following cost data (based on the projection for FY 2019 – the village's first full year of operation):

- Fire - \$1,654,450
- Parks and Recreation - \$110,200
- Stormwater - \$85,793
- Roads - \$218,490
- Local Government Administration - \$1,230,181

DEO and EDR concluded the 2016 Study and subsequent correspondence adequately addressed this requirement and DOR had no comment.

In November 2016 correspondence, the proponents provide revised annual cost data, as follows:

- Fire - \$1,579,208
- Parks and Recreation - \$105,188
- Stormwater - \$177,344
- Roads - \$208,253
- Local Government Administration - \$1,230,181

The proponents indicate that the remaining services, including law enforcement, public works, street lighting, library and cultural facilities, will continue to be provided by Martin County through the county's general fund budget. The citizens of the Village will continue to pay the ad valorem taxes and county fees to Martin County that currently fund these services.



The Revised Study provides updated cost data based on the Martin County FY 2017<sup>31</sup> budget projection for FY 2019 – the village’s first full year of operation:

- Fire - \$1,378,080
- Parks and Recreation - \$91,792
- Stormwater - \$154,757
- Roads - \$208,553
- Local Government Administration - \$1,230,181

Section 165.041(1)(b)6., F.S. – Proposed Services and Costs

***A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.***

The following services are proposed to be provided within the proposed incorporation area (with estimated costs):

- General Government Administration: \$1,230,181
- Interlocal agreement with Martin County (cost includes a 4% administrative fee):
  - Fire: \$1,654,450
  - Parks and Recreation: \$110,200
  - Stormwater: \$85,793
  - Roads: \$218,490
- Public Safety – Martin County Sheriff’s office will continue to provide these services (no estimated cost component was provided)

DEO and EDR expressed concern that although the 2016 Study and subsequent correspondence states that the majority of current services would continue to be provided by the current providers, there is no documentation from the Martin County Board of County Commissioners, the Martin County Sheriff’s Office, and other service providers confirming that current services would continue to be provided to the residents of Indiantown after municipal incorporation. Furthermore, DEO notes that the Study fails to discuss estimated costs for each current service.

DOR had no comment.

In the November 2016 response, the proponents indicated that when preparing the 2016 Study, they had the Martin County Administrator review the proposed methodology for the provision of services being transitioned from being provided by the county via the MSTUs to an interlocal agreement between the proposed Village and the county. The methodology used for determining the cost for each service is based on present levels of spending county-wide being shared on a per capita basis, plus a 4 percent administrative fee. As a result, the proposed cost of services are only slightly modified from that provided in the 2016 Study, to represent more current data available in the Martin County FY 2017 budget.

The proponents contend that the Martin County Sheriff is constitutionally required to provide the present level of service to the village following incorporation.<sup>32</sup> Furthermore, the proponents contend that since the residents of the newly incorporated Village will continue to pay Martin County ad valorem millage, the residents are providing the necessary financial support to the county for these services. Consequently, the feasibility study provided no estimate for municipality costs of law enforcement.

The Revised Study reiterates that the Village would not be the provider of services, but rather would establish levels of service, prioritize capital and maintenance projects, and be a resource for all

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<sup>31</sup> The Martin County FY 2017 budget was not yet available at the time of the 2016 Study.

<sup>32</sup> This statement does not appear to be supported by language of the Florida Constitution. See art. VIII, s. 1(d), Fla. Const. (providing that each county shall have a sheriff).

community groups.<sup>33</sup> Further clarified is the intent that there will be no change in cost for governmental and public utility services to the residents of the Village if it were to incorporate.

The following estimated costs for services are provided:

- General Government Administration: \$1,230,181
- Interlocal agreement with Martin County (cost includes a 4% administrative fee):
  - Fire: \$1,378,080
  - Parks and Recreation: \$91,972
  - Stormwater: \$154,757
  - Roads: \$208,553
- Public Works: \$181,986
- Street Lighting: \$23,300
- Library and Cultural: \$13,273
- Public Safety – Martin County Sheriff’s office will continue to provide these services (\$5,151,810)

The Revised Study further contends that based on the proposed estimated costs, Indiantown will continue to be a donor area for services that are funded by ad valorem taxes (Sheriff, Public Works, Street Lighting, Library and Cultural) due to their strong tax base per capita. Additionally, costs for services funded on a per capita basis (Fire, Parks and Recreation, Stormwater, and Roads) will decrease for the citizens of Indiantown.

Subsequent correspondence between staff and the proponents illustrated the proponents’ unchanged reliance on the underlying premise that Martin County will be expected to continue providing current services, particularly law enforcement, either based on the calculation methodology presented by the proponents or due to the continued payment of county taxes by the residents in the proposed municipality.

Section 165.041(1)(b)7., F.S. – Names of 3 Persons Submitting the Proposal

***The names and addresses of three officers or persons submitting the proposal.***

The 2016 Study provides full information for the three officers or persons submitting the proposal.

DEO and EDR concluded the list in the 2016 Study appeared complete and adequately addressed this requirement, and DOR had no comment.

Section 165.041(1)(b)8.a. & 8.b., F.S. – Fiscal Capacity and Organizational Plan

***Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation***

- a. Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.***
- b. A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.***

The 2016 Study provides the following estimates of annual revenues projected to begin in FY 2018-2019 except as otherwise noted:

- Ad Valorem Taxes (continuation of aggregate 3.1801 mills currently imposed by several county MSTUs within the area, which MSTUs are projected not to continue after incorporation): \$6,056,857
- Franchise Fees/Communication Services Tax: \$579,156
- State Revenue Sharing: \$113,280
- Local Government Half-Cent Sales Tax: \$598,065

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<sup>33</sup> Revised Study at 14.  
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- Business Tax Receipts: \$25,000
- Investment Income: \$25,000

Projections provided in the 2016 Study estimate revenues to exceed expenses each year for the first 5 years after incorporation, yielding a reserve of \$713,000 in year 1, increasing to \$4 million annually, thereafter. However, revenue and expenditure projections do not include proposed staffing or building acquisition or construction. Additionally, the FPL coal-fired plant is scheduled to close, resulting in a depreciation of the value of the property. According to correspondence received on 11/16/2016, the Property Appraiser has been depreciating the property of the power plant to prevent a large drop in revenue during a single year and the plant is presently valued as a \$63 million asset.

DEO concluded the 2016 Study did not adequately address projected costs for services being provided or debt issuance and building acquisition/construction as required.

The Revised Study provides updated estimates of annual revenues based on revenue projections from the Martin County Fiscal Year 2017 budget. The ad valorem tax revenue is adjusted only for the removal of the acreage for Little Ranch from the area proposed for incorporation. The revised projections are as follows:

- Ad Valorem Taxes (3.1529 mills as adopted in the Martin County FY 2017 budget)<sup>34</sup>: \$5,983,392
- Franchise Fees/Communication Services Tax: \$444,835
- State Revenue Sharing: \$88,762
- Local Government Half-Cent Sales Tax: \$561,874
- Business Tax Receipts: \$25,000
- Investment Income: \$25,000

EDR deferred to DOR to comment on the projections related to revenue sharing programs but noted the following comments regarding other components of this requirement:

- **Communication Services Tax (CST) and Franchise Fee** revenue of \$579,156 estimated in the Study may be overstated. An EDR projection, based on FY 2016-17 CST estimates for Martin County Government and official 2016 Florida population estimates for unincorporated Martin County, estimates revenue of \$444,801, which is \$134,355 less than the Study
- **Local Business Tax and Investment Income** projections lack an accompanying explanation of how the amounts were derived.
- **Ad Valorem Property Tax** millage rate stated in the Study as 3.1801 may be outdated. According to the most recently published Martin County FY17 Adopted Budget Summary, the proposed total millage rate increased to 3.2672, resulting in an increase \$165,892 in revenues as compared to the Study.
- **Potential Additional Revenues** were discussed, but not included, in the Study. Most notably are user fees and revenues associated with permits. Although it appears that Indiantown will be contracting with Martin County for continued services typically paid for by these fees, revenues are not reflected in the five-year operational plan even though the plan reflects payments for contracted services.
- **Population growth estimates** seem too optimistic based on recent annual population estimates of unincorporated Martin County for the five-year period between 2011 and 2016.
- **Property Tax Base** projected annual increase of 3 percent is unsubstantiated in the Study, however, compound annual growth rates (CAGR) for the area support the projection.
- **Projected revenue growth** of 3 percent annually is unsubstantiated in the Study and based on the CAGR, EDR concluded that the Study's estimate might be too optimistic.

<sup>34</sup> Page 20 of the Revised Study indicates a millage rate of 3.1801 mills yielding \$5,983,392, however, pages 39 and the charts on pages 42-44 indicate the same revenue generated by a revised millage of 3.1529 mills. Staff confirmed that \$5,983,392 is the projected revenue based on a millage rate of 3.1529 mills and that the Martin County FY 2017 budget provides for a proposed millage rate of 3.1529 mills.

- **Operating Costs** associated with the new local government are intended to be covered by the redirection of existing revenues and a Bridge Loan. The five-year operational plan identifies bridge loan proceeds of \$1,000,000 in FY 2018 and repayments in each of the subsequent five years, however, there is no discussion of how the loan payments are structured.
- **Estimated expenditures** are difficult to verify and validate due to the lack of explanation regarding the payments pursuant to an interlocal agreement with the county for services. Furthermore, there is no documentation from the county indicating these services will be provided for the amounts indicated.
- **Projected growth of expenditures and most revenues** is estimated at 3 percent annually. The Study does not provide documentation or explanation to substantiate the estimate presented. A comparison to CAGR data for statewide municipal government revenues and expenditures between FY 2003-04 and 2013-14 suggests the Study's assumption is reasonable.
- In light of the lack of documentation and explanation of expense estimates and revenue calculations, EDR concluded that it is difficult to assess the validity of the five-year projections of revenues and expenses and the projected surpluses.

The Revised Study provides for updated projections, based on the Martin County FY 2017 budget, for the CST and Franchise Fees of \$444,835 and Ad Valorem Property Tax based on the adopted millage rate of 3.1529. Additionally, the Revised Study states the Village will take a bridge loan at 3 percent APR and with a five year repayment schedule in order to fund initial expenses for the first year of the new municipality.

The Revised Study states that estimated expenditures are based on the per capita expenses for each area funded by MSTUs, multiplied by the population of the area proposed for incorporation. A 4-percent administrative fee was then added, resulting in the total projected cost. The proponents indicate there was communication with the County Administrator regarding the methodology and proposed estimates for the cost of the MSTU services. Additionally, the Revised Study contends that, based on experiences of other proposed incorporations, County staff will not negotiate letters of intent or memoranda of understanding with a group contemplating incorporation and then renegotiate the same document with the newly formed body of elected officials after a successful incorporation effort.

The Revised Study states that the population growth estimates used in the 2016 Study are based on data from Martin County indicating an annual population increase of 2 percent over the last 5 years.

DOR extensively analyzed the fiscal capacity of the proposed Village. The initial response focused on potential conflicts between the initial dates of eligibility for state revenue sharing and other tax distributions and when DOR could actually transmit such funds to the proposed Village.<sup>35</sup> DOR also provided a table of estimated revenue sharing distributions to which the Village would be entitled upon meeting (or waiving) the requirements of s. 218.23, F.S., as well as the impact of these distributions on the revenues of Martin County, City of Stuart and the towns of Jupiter Island, Ocean Breeze, and Sewall's Point.<sup>36</sup>

### *Revenue Sharing*

To be eligible for revenue sharing, a municipality not only must exist but must have elected and seated its legislative body.<sup>37</sup> As a unit of local government, the municipality also must comply with the requirements of s. 218.23, F.S., including reporting its finances for its most recently completed fiscal

<sup>35</sup> DOR 2016 Review, p. 2-4.

<sup>36</sup> A copy of the table is attached to this analysis as Appendix C. DOR 2016 Review, p. 5.

<sup>37</sup> Section 218.21(3), F.S.

year<sup>38</sup> and either levied ad valorem taxes of at least 3 mills or collected revenue from specified other sources equivalent to what would be raised by such an ad valorem assessment.<sup>39</sup>

DOR noted the bill provides for the Village to be eligible for revenue sharing beginning January 1, 2018, and waives the requirements of s. 218.23(1), F.S., through September 30, 2021. The bill waives the financial reporting and annual audit of Village financial accounts through fiscal year 2020-2021. The bill also allows ad valorem taxation levied by special districts to be used toward the 3 mill requirement for an indefinite period of time.

### *Half-Cent Sales Tax*

A newly-incorporated municipality not only must meet the statutory requirements for revenue sharing to participate in the local government half-cent sales tax distribution but also all applicable criteria for incorporation under s. 165.061, F.S.<sup>40</sup> Section 165.061(1)(c), F.S., imposes the condition that the new municipality must have an average population density of at least 1.5 persons per acre, unless extraordinary conditions exist. Although the proposed Village does not meet the minimum levels for population density,<sup>41</sup> DOR interprets the waivers of these requirements in the bill as meeting the criteria for the Village to receive this distribution.

### *Gas Tax Revenues*

A newly-created municipality entitled to receive distributions under ch. 218, Parts II (Revenue Sharing) and VI (Half-Cent Sales Tax), F.S., is entitled to receive distributions of certain gas taxes if levied by the county.<sup>42</sup> These distributions cannot begin until the new municipality's first full fiscal year.<sup>43</sup> As stated, Indiantown is eligible for revenue sharing and the half-cent sales tax, and is therefore entitled to receive gas tax revenues from Martin County.

Martin County imposes local option gas taxes<sup>44</sup> which the Village would be entitled to share. The 2016 Study states revenue from gas taxes is not estimated because the intent of the Village would be for the County to retain all such funds and continue to perform all road maintenance and repair. The bill indicates revenues will be distributed in accordance with general law or an interlocal agreement with the County. However, DOR notes that such agreements cannot be entered prior to an election of the government body and prior to the first Village Council meeting. DOR also notes that statute requires the interlocal agreement to be executed prior to June 1 and a certified copy provided by July 1, to become effective at the beginning of the next local fiscal year, which would be October 1.

### *Local Communications Services Tax*

Counties and municipalities by ordinance may levy a tax on communication services<sup>45</sup> which applies to taxable services after January 1 of a given year.<sup>46</sup> A municipality adopting, repealing, or changing such a tax must notify DOR by September 1 preceding the January 1 in which the change would go into effect.<sup>47</sup> Assuming that the Village elects its governing body, holds its first Village Council meeting,

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<sup>38</sup> Section 218.23(1)(a), F.S. This report is submitted to the Dept. of Financial Services. S. 218.32, F.S.

<sup>39</sup> Section 218.23(1)(c), F.S.

<sup>40</sup> Section 218.63(1), F.S.

<sup>41</sup> Section 165.061(1)(c), F.S., requires a minimum population density of 1.5 person/acre.

<sup>42</sup> Section 336.025(4)(b), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Martin County Code of Ordinances, Ch. 71, Art. 5. *available at*

[https://www.municode.com/library/fl/martin\\_county/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH71FITA\\_ART5LOOPGATA](https://www.municode.com/library/fl/martin_county/codes/code_of_ordinances?nodeId=COOR_CH71FITA_ART5LOOPGATA) (accessed January 31, 2017).

<sup>45</sup> Section 202.19(1), F.S. "Communication services" are defined by s. 202.11(1), F.S., with a number of exclusions such as one for internet access, electronic mail, or similar online computer services. S. 202.11(1)(h), F.S.

<sup>46</sup> Section 202.21, F.S.

<sup>47</sup> *Id.*

adopts a local communications service tax rate, updates the Department of Revenue’s address database and notifies the Department of Revenue of its own municipal rate by September 1, 2018, the earliest that the Village’s local communications services tax could be imposed would be effective January 1, 2019. The bill proposes continuing the local communications services tax rate imposed by Martin County through June 1, 2018. As a result, there will be a gap from June 1, 2018 through December 31, 2018, when the Village will not receive distributions of local communications services tax collections per the Proposed Charter.<sup>48</sup>

DOR further noted the bill provides for the present tax imposed by Martin County to be shared with the Village in proportion of the projected population of the Village to the population of the unincorporated portion of the county before the incorporation took effect. For such an arrangement the county and Village must update data on service addresses with DOR by September 1, 2018.<sup>49</sup>

**Section 165.041(1)(b)9, F.S. – Data and Analysis Showing Incorporation is Necessary and Feasible**  
***Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.***

The 2016 Study and November 2016 letter responding to the initial staff review bases the analysis and evidence of financial feasibility on the redirection of existing revenues derived from assessments levied by the county for the fire/rescue, parks and recreation, stormwater, and roads. The Study indicates that law enforcement services will continue to be provided by the County. With respect to cost, the Study assumes present spending levels county-wide being shared on a per capita basis plus a 4-percent administrative fee for the interlocal agreement and indicated that the Martin County Administrator agreed with the methodology.

The Study also indicates the estimated population of the proposed area of incorporation is 5,717 people, which was later revised to 5,457 due to the removal of a small residential area known as Little Ranch.<sup>50</sup> Total population, including seasonal residents, is estimated to approach 9,000 people. The growth in population is projected to increase at an annual rate of 2-percent, reaching 6,200 by Fiscal Year 2022, with a service population of 10,000.

The Study provides for a millage rate of 3.1801 yielding a projected total village budget for Fiscal Year 2019 (the first full year of operation) of \$7,405,173. For comparison, the following are the millage rates and general fund expenditures (for Fiscal Year 2015-2016) for similarly-sized municipalities in nearby counties:

	Pahokee	Tequesta	Fellsmere	South Bay
Millage Rate	6.5419	6.2920	5.2756	6.3089
Expenditures	\$3,740,556	\$11,243,500	\$2,831,610	\$2,139,289

DEO stated that the Study provided only minimal discussion for the methodologies regarding the 2 percent annual increase in population and the 3 percent annual increase in expenses and revenues. Coupled with the reliance on external agencies to provide essential services, DEO expressed concern as to the financial feasibility of the proposed incorporation.

EDR assumes that the 2016 Study’s SWOT analysis reflects the views of incorporation proponents residing within the Indiantown community and the collective conclusion that incorporation is needed and necessary. However, EDR expresses concern regarding the financial feasibility of the proposed municipality.

<sup>48</sup> As noted in the February 15, 2017 letter from Subcommittee staff, the proponents agreed to revise the timing for collecting the CST to January 1, 2019.

<sup>49</sup> DOR 2016 Review, p. 3-4.

<sup>50</sup> The total acreage of the proposed area of incorporation was not revised to remove the Little Ranch area.

DOR had no comment.

The Revised Study provides for a millage rate of 3.1529, as is consistent with the Martin County FY 2017 Budget and revises the estimated revenues accordingly.

The Revised Study maintains the position that the Village would not be the provider of services, and as a result, there will be no change in cost to the residents of Indiantown. The Revised Study provides the following comparison of the estimated cost of government services provided by the county within the Village of Indiantown if they remained unincorporated versus incorporating:

	<b>Unincorporated Martin County</b>	<b>Village of Indiantown</b>
Sheriff	\$ 5,151,810	\$ 5,151,810
Public Works	\$ 181,083	\$ 181,986
Street Lighting	\$ 23,200	\$ 23,300
Library and Cultural	\$ 13,273	\$ 13,273
Fire	\$ 4,794,267	\$ 1,378,080
Parks & Rec	\$ 282,384	\$ 91,972
Stormwater	\$ 506,128	\$ 154,757
Roads	\$ 617,525	\$ 208,553
Local Gov't Cost	\$ -	\$ 1,230,181
<b>Total</b>	<b>\$ 11,569,670</b>	<b>\$ 8,433,912</b>

In this scenario, the proponents argue that Indiantown will continue to be a donor area for services provided by ad valorem taxes (Sheriff, Public Works, Street Lighting, Library and Cultural) due to their strong tax base per capita and that other areas funded on a per capita basis would decrease (Fire, Parks and Recreation, Stormwater, and Roads).

Both the 2016 Study and the Revised Study maintain that the financial feasibility of the proposed municipality is based on the redirection of existing revenues derived from assessments levied by the county for the fire/rescue, parks and recreation, stormwater, and roads. Furthermore, the proponents maintain the position that law enforcement services will continue to be provided by the County despite the loss of revenue to the county as a result of the incorporation.

In a March 2017 response to correspondence from staff addressing the ongoing concern regarding the estimated costs for services, particularly related to law enforcement, the proponents refuted the cost estimate of \$5,151,810 identified by staff (as provided in the Revised Study) and subsequently provided a revised cost estimate based on a per capita methodology. The detail provided by the proponents was not sufficient for staff to determine if the outstanding concerns regarding financial feasibility were resolved.

Using the Martin County FY 2017 adopted budget,<sup>51</sup> official 2016 Florida population estimates,<sup>52</sup> and the projected population as provided in the Revised Study, staff employed a per-capita cost methodology to generate a cost estimate for Sheriff/law enforcement services. The cost for law

<sup>51</sup> Martin County Board of County Commissioners, *FY 2017 Adopted Budget*, available at [https://www.martin.fl.us/sites/default/files/meta\\_page\\_files/martin\\_county\\_fy17\\_adopted\\_budget\\_book.pdf](https://www.martin.fl.us/sites/default/files/meta_page_files/martin_county_fy17_adopted_budget_book.pdf) (accessed on 3/7/2017).

<sup>52</sup> Office of Economic and Demographic Research, Population and Demographic Data, *Florida Population Estimates for Counties and Municipalities: April 1, 2016*, available at [http://edr.state.fl.us/Content/population-demographics/data/2016\\_Pop\\_Estimates.pdf](http://edr.state.fl.us/Content/population-demographics/data/2016_Pop_Estimates.pdf) (accessed on 3/7/2017).

enforcement services<sup>53</sup> only is approximately \$1,516,829. All Sheriff's Office services, which includes law enforcement, corrections,<sup>54</sup> and judicial<sup>55</sup> has an estimated cost of \$2,220,227.

The cost of providing law enforcement services to the proposed municipality would be subject to an interlocal agreement between the municipality and the county. These cost projections represent the upper bound for the provision of law enforcement services. The final value would be determined by interlocal agreement.

Section 165.041(1)(b)10. – Evaluation of Alternatives to Incorporation

***Evaluation of the alternatives available to the area to address its policy concerns.***

The 2016 Study does not identify the evaluation of alternatives to incorporation but rather indicates that Indiantown is an inland community with very different needs than the rest of the populated areas of coastal Martin County. The adoption of a dependent special district<sup>56</sup> or planning overlay district, which would continue to be governed by the County Commission and not Indiantown elected officials, would not provide the same degree of local control over fiscal and planning policies as municipal incorporation. An independent special district, although governed by a separate board directly elected by the residents, would not have the same general government powers as a municipality.<sup>57</sup>

DEO found the 2016 Study does not include an evaluation of the alternatives to municipal incorporation and therefore does not meet this requirement. EDR took no position, stating this was a determination subject to the opinion of the reader. DOR took no position.

Section 165.041(1)(b)11., F.S. – Evidence the Proposed Municipality Meets the Requirements for Incorporation under s. 165.061(1), F.S.

***Section 165.061(1)(a), F.S. – Compact, Contiguous, Amenable to Municipal Gov't.***

***New municipality is compact and contiguous and amenable to separate municipal government.***

The 2016 Study includes a map identifying the area proposed for incorporation as contiguous and compact, with no outlying enclaves.

DEO and EDR concurred that the area proposed for incorporation met this requirement. DOR took no position.

***Section 165.061(1)(b), F.S. – Minimum Population***

***New municipality has a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 population in counties with a population of more than 75,000.***

The 2016 Study identifies a population of 5,717 for the proposed area for municipal incorporation. As of the 2010 U.S. Census, Martin County had a population of 146,318.

DEO, EDR, and DOR concur that the proposed Village meets this requirement.

In a letter dated November 2016, the proponents indicate that an amendment has been made to the original area proposed for incorporation by removing the area known as Little Ranch. As a result, the estimated population has decreased to 5,457. The Revised Study, and all subsequent

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<sup>53</sup> FY 2017 Adopted Budget at R-13. Law enforcement services include administration, road patrol, criminal investigation, field support and directed operations.

<sup>54</sup> FY 2017 Adopted Budget at R-14. Corrections includes administration, facility operations, and support.

<sup>55</sup> FY 2017 Adopted Budget at R-15. Judicial includes bailiffs and/or security for all courtrooms and specified official executive meetings with Martin County.

<sup>56</sup> See s. 189.012(2), F.S.

<sup>57</sup> See s. 189.012(3), (6), F.S.



correspondence, reflects this change. The proposed Village continues to meet the requirement of this section.

**Section 165.061(1)(c), F.S. – Minimum Population Density**

***New municipality has an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.***

Barring extraordinary circumstances, a proposed municipality must have an average population density of 1.5 persons/acre. As currently presented, DEO and EDR concur the proposed area does not meet the population density requirement. A waiver of the statute will be required in order for the municipality to receive certain half-cent sales tax distributions, as explained above. DOR had no comment.

The 2016 Study originally indicated a population of 5,717 for the 9,397.50 acres proposed for municipal incorporation, resulting in a population density of 0.61 persons/acre. The population was later revised to 5,457 due to the removal of an area known as Little Ranch from the area proposed for incorporation. The Study does not indicate any revision to the acreage of the area proposed for municipal incorporation. Therefore, the revised population density is 0.58 persons/acre, still below the minimum statutory requirement. The Study requests a waiver of this statutory requirement and provides the following evidence of support:

1. 4,335 acres of the proposed area of incorporation are industrial and utility land and “provide a good tax base and job opportunities for the community.” The 2016 Study suggests removing this non-residential acreage from the population density calculation.
2. The approved Indiantown DRI includes entitlements in place for 1,600 new residential units. Based on the Martin County average of 2.3 persons per household, this development is estimated to add 3,680 new people to the area proposed for municipal incorporation, for a total population of 9,137.

The Study argues that the inclusion of 3,680 new people expected due to future development coupled with the exclusion of the 4,335 acres of non-residential land located in the area of proposed municipal incorporation would yield a revised population density of 1.80 persons/acre, meeting the statutory minimum of 1.5 persons/acre.

The Revised Study provides an amended population density as a result of removing the acreage associated with the Little Ranch area. Using the revised acreage of 8,632.91, the population density is 0.63 persons/acre, still below the minimum statutory requirement. The Revised Study maintains the request for a waiver of this statutory requirement, as well as the evidence of support presented in the 2016 Study. The inclusion of 3,680 new people<sup>58</sup> expected due to future development coupled with the exclusion of the 4,335 acres of non-residential land located in the area of proposed municipal incorporation would yield a revised population density of 2.13 persons/acre, meeting the statutory minimum of 1.5 persons/acre. Current law does not provide for any exceptions to the population density requirement.

**Section 165.061(1)(d), F.S. – Minimum Distance from Existing Municipalities**

***New municipality has a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least two miles or has an extraordinary natural boundary which requires separate municipal government.***

The 2016 Study indicates that the area is not within two miles of any existing municipality.

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<sup>58</sup> Page 13 of the Revised Study indicates the total population, after accounting for the projected increase of 3,680, is 9,317, which results in a population density of 1.03 persons/acre. The population figure was transposed and should read 9,137, which results in a population density of 1.06 persons/acre.

DEO indicated that the nearest municipalities are Stuart (25 miles), Okeechobee (27 miles), and Pahokee (26.7 miles) and therefore concurred that the proposed area meets this requirement. EDR also concurred and DOR had no comment.

**Section 165.061(1)(e)1. & (e)2. – Proposed Municipal Charter**

- 1. Proposed charter prescribes the form of government and clearly defines the responsibility for legislative and executive functions.**
- 2. Proposed charter does NOT prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.**

The 2016 Study includes the proposed charter, which is now set out in the bill. Neither the 2016 Study nor the bill prohibits the Village council from levying any authorized tax. The proposed charter established by the bill complies with this requirement.

DEO concluded the proposed charter both prescribed the form of government and did not prohibit the Village council from exercising its power to levy any tax authorized by the Florida Constitution or general law. EDR deferred to DEO and DOR; DOR took no position.

**Section 165.061(1)(f), F.S. – Solid Waste Contracts**

***Per s. 10, Art. I, Fla. Const., plan honors existing solid-waste contracts in the affected geographic area subject to incorporation. (May provide for existing contracts for solid-waste-collection services to be honored only for five years or the remainder of the contract term, whichever is less, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time after a written request to do so.)***

The 2016 Study indicates that the proposed Village will continue to honor and rely upon the County's present contract for solid-waste services and the bill takes no action to impair such contracts.

EDR and DEO concluded that the 2016 Study adequately address this requirement. DOR had no comment.

**Section 165.041(1)(c), F.S. – Information on County Municipal Overlay**

***Incorporates information on county's municipal overlay adopted per s. 163.3217, F.S.***

Martin County does not have a municipal overlay for the Indiantown area.

***Ability of Proposed City to Meet Annual Financial Reporting Requirements***

As a local government entity, the Village will be required to file with the Dept. of Financial Services a copy of its annual financial report for the previous fiscal year.<sup>59</sup> If the Village's total revenues, or total expenditures and expenses, exceed \$250,000, the Village must have an annual financial audit by an independent certified public accountant.<sup>60</sup>

The proponents were asked to provide information on the proposed Village's ability to meet its annual financial reporting obligations. The proponents state sufficient funds are included within the general administrative and finance expenditures (amount of \$35,000) to pay for the expenses necessary to prepare and file the annual financial report.<sup>61</sup>

**Effect of Proposed Changes**

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<sup>59</sup> Section 218.32(1)(a), F.S.

<sup>60</sup> Section 218.39(1), F.S.

<sup>61</sup> 2016 Study, p. 32

The bill creates the Village of Indiantown in a previously unincorporated area of Martin County, Florida, and provides a charter structuring the village government, providing powers and authority, and providing for a transition to the fully-functioning village government.

The charter provides for a council-manager form of government, with 5 village council members serving 4 year terms, elected in non-partisan elections. After each election the council will select two of their members to serve 2 year terms as mayor and vice-mayor, respectively. Council members are elected to 5 at large seats.

The council is the sole judge of the qualifications of the members, including forfeiture of office. Procedures are provided for determining and filling vacancies on the council. Council members are entitled to reimbursement as provided in general law for travel and per diem expenses. No compensation is established initially but the council is authorized to provide for compensation of its members; however, no such compensation may take effect until after the expiration of the terms of members elected at the next regular election.

The council will employ a village manager, who serves as the chief administrative officer of the Village at the pleasure of the council. The village manager acts under the supervision of the council. The administrative section of the charter also provides for the office and duties of the village attorney, authorizes expenditures of Village funds only on due appropriation, and authorizes the council to create or terminate boards and agencies.

The legislative power of the Village is vested in the council. The village council is to conduct regular public meetings on due notice. Special meetings may be conducted on the call of the mayor or a majority of council members. The council exercises this authority through the adoption of ordinances and resolutions.

The charter provides for a fiscal year of October 1 – September 30. Under the Village budget process, a minimum of 2 public hearings on the budget must be held before the council may adopt it. The Village is authorized to issue bonds and revenue bonds, and is required to perform an annual independent audit of all financial accounts.

The charter provides for a referendum to create the Village to be held on November 7, 2017. If approved, the Village is created and incorporated effective December 31, 2017. The charter provides for the first regular election of council members to take place no later than March 13, 2018 and ten weeks prior to the general election on each even-numbered year thereafter. The three council members with the highest number of votes will serve 4 year terms ending in August 2022. The two remaining council members will serve 2 year terms ending in August 2020. Beginning with the election of council members in 2020, village council members will be elected to full 4 year terms.

The bill provides the following waivers of general law necessary to complete the incorporation and for the operation of this Village:

- Waives the requirements of s. 218.23(1), F.S., relating to ad valorem taxation, allowing millage levied by special districts to satisfy the 3 mill requirement for an indefinite period of time. The funds levied and collected by the special districts are not turned over to the proposed Village.
- Waives the requirements of s. 218.23(1), F.S., for the purpose of auditing and financial reporting through the end of the village fiscal year 2018-2019.<sup>62</sup>
- Waives the minimum population density requirement of s. 165.061(1)(c), F.S., to protect the character, natural resources, and quality of life of the Village.

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<sup>62</sup> As noted in the February 15, 2017 letter from Subcommittee staff, the proponents agreed to shorten the time period for the waiver of financial reporting until FY 2019-2020.

The bill will result in new distributions of communications services tax, revenue sharing, local option gas tax, and half-cent sales tax funds to the new Village, reducing certain amounts currently distributed to Martin County and the cities of Jupiter Island, Ocean Breeze, Sewall's Point, and Stuart. The bill allows the millage levied by special districts to be used to satisfy the 3 mill requirement for an indefinite period of time but does not provide for those funds collected to be turned over to the proposed Village. The Florida Constitution authorizes municipalities to levy ad valorem taxes up to 10 mills. The Florida Constitution and general law will control the village's ability to levy ad valorem taxes. The Village plans to impose ad valorem taxes consistent with the current rates levied by Martin County to fund operations. The 2016 Study relies on the continuation of services via interlocal agreements with the County to result in the redirection of existing revenues rather than the need to impose additional tax revenues to support the financial viability of the proposed village. This intent was reaffirmed in the Revised Study and Economic Impact Statement and has continued to be reaffirmed in all subsequent correspondence.

The Revised Study provides a projected revenue decrease to Martin County for FY 2019 of \$1,095,099 in General Fund revenue and \$4,150,210 in Special Revenue Fund revenue as a result of the incorporation of Indiantown. Given that the underlying principle of the proposed municipal incorporation appears to be that residents in the affected area will continue to receive full county services without paying any additional taxes, the municipality is projected to accrue significant reserves based on statutorily-required distribution formulas, and the other residents/property owners in the County, other municipalities and the State (because of the statewide distribution calculations) will receive lower amounts of revenue sharing funds in order to support the proposed municipality. The Revised Study does not provide replacement revenues for the expected law enforcement services but offers the following options for the County to manage this revenue loss:

- Find more efficiencies in present expenditures.
- Reduce County services.
- Increase taxes/fees, or create new fees.

Based on all the information provided by the 2016 Study, the Revised Study, supplemental correspondence, and the initial and subsequent EIS (including no cost estimate for law enforcement services, thus requiring the assumption that the new municipality must bear the full cost of its law enforcement services), an initial ad valorem taxation rate of 4.3228 mills appears to be required for the new municipality to be financially feasible. This projection is based on data provided by the proponents for Indiantown, in conjunction with the additional estimates calculated by staff, including the provisions for municipal services as described in the Revised Study. Ultimately, the actual cost for law enforcement services in Indiantown will be decided in the interlocal agreement between Martin County and Indiantown.

## B. SECTION DIRECTORY:

- Section 1. Creates the Village of Indiantown, provides the charter for the Village, and provides for approval for creation in a referendum election on November 7, 2017, and if approved, effective December 31, 2017.
- Section 2. Provides for the broad municipal powers of the village and establishes a council-manager form of government.
- (1) Creates the 5 member village council, which exercises all charter powers of the Village.
  - (2) Requires the village council to appoint a village manager to be the chief administrative officer, serving at the pleasure of the council.
- Section 3. Provides for the physical boundaries of the Village.
- Section 4. Provides for the powers and duties of the Village council.
- (1) Divides council into 5 at large seats.

- (2) States the qualifications necessary to run for a council seat.
- (3) Provides 4 year terms for village council members.
- (4) Requires the village council, at the first regular meeting after each election, to choose one of the council members to serve as mayor. Provides duties of the mayor.
- (5) Requires the village council, at the first regular meeting after each election, to choose one of the council members to serve as vice-mayor. Provides vice-mayor shall serve as acting mayor in absence of mayor.
- (6) Authorizes council to provide for compensation of members but such compensation does not go into effect until after the next regular election.
- (7) Authorizes the council to hold regular meetings that are public meetings and provisions for the call of special meetings.
- (8) Provides a majority of council members is a quorum.
- (9) Prohibits council members from interfering with Village employees in the course of their duties or removing any employee, with the exception of the village manager and village attorney.
- (10) Prohibits elected Village officials from being employed by the Village for at least 1 year after vacating office.
- (11) Describes the circumstances under which vacancies may arise in the office of mayor, vice-mayor, or village council member, including forfeiture of office.

Section 5. Provides for a village manager and village attorney.

Section 6. Authorizes the village council to establish, modify or terminate departments, boards or agencies as necessary; establish a personnel system; and provides for comprehensive planning and zoning as necessary.

Section 7. Provides for the financial management of the Village.

- (1) Sets the village fiscal year as 10/1 – 9/30.
- (2) Provides for adopting annual Village budget after at least 2 public hearings. The resolution adopting the budget shall also act as appropriation of the necessary amounts.
- (3) Budgeted expenditures cannot exceed budgeted revenues.
- (4) Provides authority and restrictions on supplemental budgeting of revenue surpluses, actions necessary to revise budget in the event of revenue shortfalls. Prohibits reduction in amounts appropriated for debt service.
- (5) Authorizes village council to issue bonds subject to all legal requirements.
- (6) Authorizes issuing revenue bonds as provided in law.
- (7) Requires independent annual audit of all Village accounts.
- (8) Prohibits the state from being liable for any financial shortfalls of the Village.

Section 8. Provides authority and requirements for all elections under the charter.

- (1) Defines Village electors as resident of the Village.
- (2) Requires all elections for village council to be nonpartisan.
- (3) Sets the dates for elections. The first regular election to be held March 13, 2018. Thereafter, elections will be held ten weeks prior to the date of the general election on each even numbered year.
- (4) Creates the Village canvassing board.
- (5) Provides requirements and procedures for general elections. Provides for recall of council members by general law.

Section 9. Reserves the powers of initiative and referendum for the qualified registered voters of the village.

Section 10. Provides general provisions and authority.

- (1) Provides for a code of ethics for all officers and employees of the village.
- (2) Authorizes charter amendments as provided by law.
- (3) Provides for severability of any charter provision held invalid by the courts.

- Section 11. Creates the transition schedule to implement the charter after the Village is created.
- (1) Provides for the referendum on creating the Village to be held on November 7, 2017  
Provides the ballot question.
  - (2) Provides for initial special election of council members. Provides for qualifications of candidates in the special election. Provides procedures for the election. Provides for terms of initial election and timing of subsequent general elections.
  - (3) Authorizes the village council to borrow money for first year expenses of government.
  - (4) Provides for all codes, ordinances, and resolutions of Martin County applicable to the Village to continue in effect as municipal codes, etc. until otherwise modified or replaced by the Village council.
  - (5) Provides for continuation of county ordinances, rules, regulations, as municipal ordinances, rules, and regulations until revised or rescinded by Village council.
  - (6) Provides for continuation of county comprehensive plan and land use ordinances as the Village's transitional plan and ordinances. Requires all planning functions, duties, and authority to be vested in the Village council. Limits amendments, revisions, rescinding provisions of county comprehensive plan applicable to Village.
  - (7) Provides Village is entitled to participate in state revenue sharing beginning on April 1, 2018. Provides for information on population estimates.
  - (8) Waives the requirements of s. 218.23(1), F.S., for purpose of conducting audits and financial reporting through Village fiscal year 2018-2019.
  - (9) Authorizes the millage levied by special districts, pursuant to s. 218.23(1) related to ad valorem taxation, to be used for an indefinite period of time for purposes of calculating state revenue sharing for the Village.
  - (10) Provides for revenues under Martin County communication services tax to be shared with Village on a proportionate basis through January 1, 2019.
  - (11) Provides Village is entitled to receive local option gas tax revenues beginning October 1, 2018.
  - (12) Provides that contracts currently in existence for services and facilities may remain in effect until the council establishes independent services. Provides that solid waste contracts continue to be honored as required by s. 165.061(1)(f), F.S.
  - (13) Provides that portion of the Martin County Fire Rescue Municipal Service Taxing Unit within the boundaries of the Village shall continue until Village adopts a contrary ordinance.
  - (14) Provides Martin County Sheriff's Office will continue providing law enforcement services until Village adopts a contrary ordinance.
  - (15) Directs the Village, upon incorporation, to adopt ordinances and enter into local agreements with the county to address funding and taxation issue associated with the portion of the Martin County Community Redevelopment Agency that exists within the boundaries of the village.

Section 12. Finds requirements for incorporation have been met except for the minimum population density requirement of s. 165.061(1)(c), F.S.

Section 13. Provides act takes effect upon approval by majority of qualified electors voting in a referendum. Provides section 11, subsection (1), and section 13 take effect upon act becoming law. The bill provides for a referendum election to be held on November 7, 2017.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?  
WHERE?

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? November 7, 2017

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The amendment:

- Clarifies procedures relating to the call of the referendum;
- Requires the referendum election be held on November 7, 2017;
- Clarifies that the first regular election of council members shall be held on March 13, 2018, and ten weeks prior to the general election on even-numbered years thereafter;
- Revises the qualifying period for council elections;
- Establishes the first council meeting to take place March 21, 2018, or the following Tuesday, if the election results have not yet been certified;
- Provides procedures for the selection of the council mayor;
- Revises the date in which the Village is entitled to participate in state revenue sharing from January 1, 2018 to April 1, 2018;
- Waives the requirements for conducting audits and financial reporting through Village fiscal year 2018-2019; and
- Requires the local communications services tax rate imposed by Martin County continue through January 1, 2019.

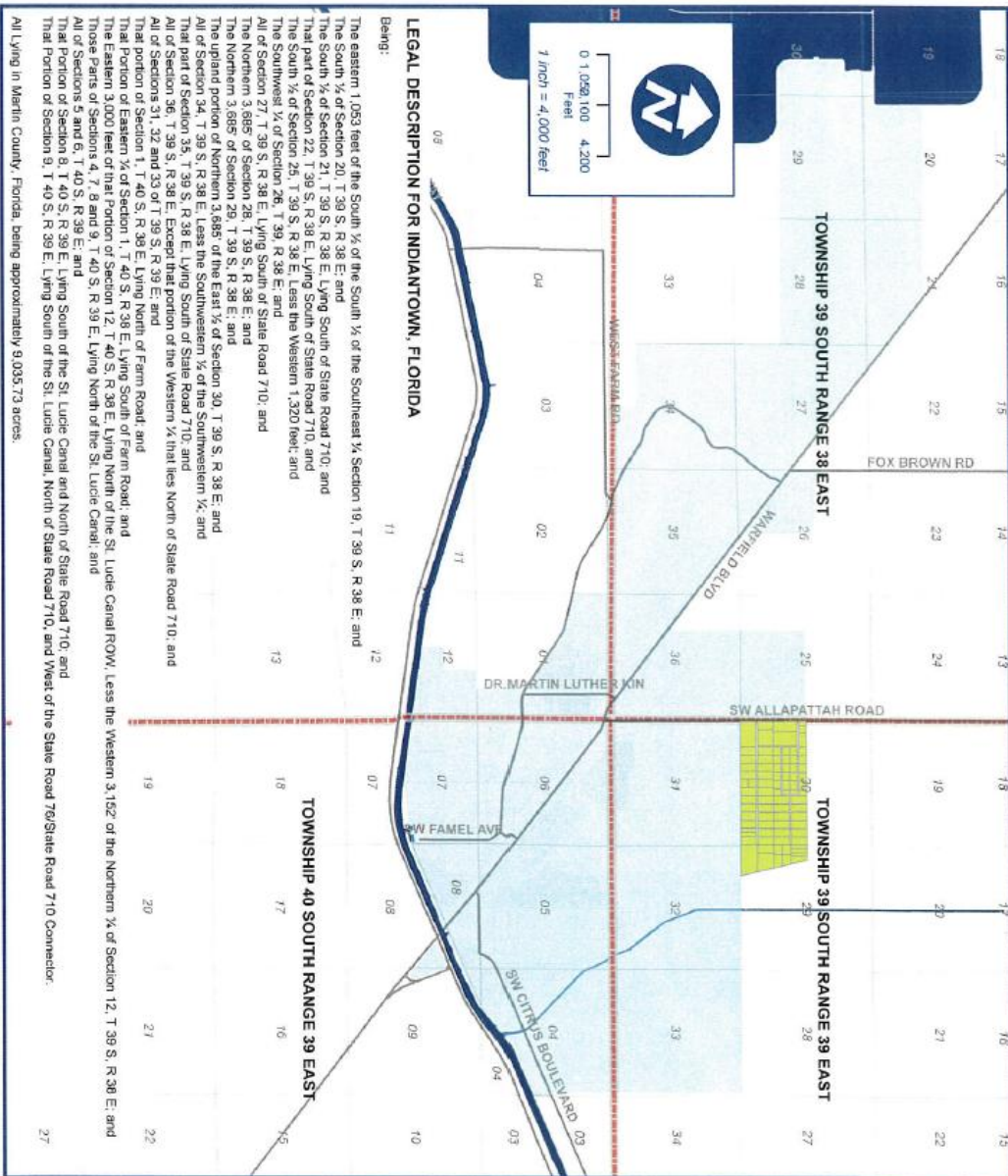
This analysis is drafted to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

**APPENDIX A**  
**MATERIALS RECEIVED**

<b>Document</b>	<b>Date</b>	<b>Author</b>
Village of Indiantown Incorporation Feasibility Study	8/2016	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Re: Indiantown Municipal Incorporation Feasibility Study Review	9/27/2016	Local & Federal Affairs Committee
Re: Indiantown Responses to September 27, 2016 Letter and Revised Map	11/16/2016	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Review of Proposed Village of Indiantown Municipal Incorporation	12/2/2016	Dept. of Economic Opportunity
Memorandum: Proposed Incorporation – Village of Indiantown, Martin County	12/5/2016	Department of Revenue
Response to Request for Evaluation of Village of Indiantown Incorporation Feasibility Study	12/5/2016	Office of Economic and Demographic Research
Economic Impact Statement	1/17/2017	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Memorandum: Indiantown Economic Impact Statement	1/25/2017	Local, Federal and Veterans Affairs Subcommittee
Re: Indiantown Responses to the Jan 25, 2017 Memo from Tracy Banner	2/1/2017	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Village of Indiantown Incorporation Revised Feasibility Study	2/13/2017	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Revised Economic Impact Statement	2/13/2017	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Re: HB 259 – Proposed Municipal Incorporation of Indiantown; HB 261 – Proposed Municipal Incorporation of Hobe Sound	2/15/2017	Local, Federal and Veterans Affairs Subcommittee
Re: Indiantown/Hobe Sound Responses to the February 15, 2017 Memo	3/6/2017	Joseph Mazurkiewicz, Jr. BJM Consulting, Inc.
Re: HB 259 – Proposed Municipal Incorporation of Indiantown; HB 261 – Proposed Municipal Incorporation of Hobe Sound	3/10/2017	Local, Federal and Veterans Affairs Subcommittee
RE: Hobe Sound Responses to the March 10, 2017 Memo from Eric Miller	3/14/2017	Local, Federal and Veterans Affairs Subcommittee



# APPENDIX B MAP OF PROPOSED AREA OF INCORPORATION



**LEGAL DESCRIPTION FOR INDIANTOWN, FLORIDA**

Being:

The eastern 1,053 feet of the South 1/4 of the South 1/4 of the Southeast 1/4, Section 19, T. 39 S., R. 38 E.; and  
 The South 1/4 of Section 20, T. 39 S., R. 38 E.; and  
 The South 1/4 of Section 21, T. 39 S., R. 38 E., Lying South of State Road 710; and  
 That part of Section 22, T. 39 S., R. 38 E., Lying South of State Road 710; and  
 The South 1/4 of Section 25, T. 39 S., R. 38 E., Less the Western 1,320 feet; and  
 The Southwest 1/4 of Section 26, T. 39 S., R. 38 E.; and  
 All of Section 27, T. 39 S., R. 38 E., Lying South of State Road 710; and  
 The Northern 3,685 of Section 28, T. 39 S., R. 38 E.; and  
 The Northern 3,685 of Section 29, T. 39 S., R. 38 E.; and  
 The upland portion of Northern 1,685 of the East 1/2 of Section 30, T. 39 S., R. 38 E.; and  
 All of Section 34, T. 39 S., R. 38 E., Less the Southwest 1/4 of the Southwest 1/4; and  
 That part of Section 35, T. 39 S., R. 38 E., Lying South of State Road 710; and  
 All of Section 36, T. 39 S., R. 38 E., Except that portion of the Western 1/4 that lies North of State Road 710; and  
 All of Sections 31, 32 and 33 of T. 39 S., R. 39 E.; and  
 That portion of Section 1, T. 40 S., R. 39 E., Lying North of Farm Road; and  
 That portion of Section 1, T. 40 S., R. 39 E., Lying South of Farm Road; and  
 The Eastern 3,000 feet of that portion of Section 12, T. 40 S., R. 39 E., Lying North of the St. Lucie Canal ROW; and  
 Those Parts of Sections 4, 7, 8 and 9, T. 40 S., R. 39 E., Lying North of the St. Lucie Canal; and  
 All of Sections 5 and 6, T. 40 S., R. 39 E.; and  
 That portion of Section 8, T. 40 S., R. 39 E., Lying South of the St. Lucie Canal and North of State Road 710; and  
 That portion of Section 9, T. 40 S., R. 39 E., Lying South of the St. Lucie Canal, North of State Road 710; and West of the State Road 70/State Road 710 Connector.

All Lying in Martin County, Florida, being approximately 9,035.73 acres.

## SKETCH & DESCRIPTION PROPOSED BOUNDARY

Incorporation Feasibility Study  
Indiantown, Florida  
October 19, 2016

**Legend**

- Little Ranches (Removed from Bndry)
- Township and Range
- Sections
- Incorporation Limits (10-19-16)
- Parcel Boundaries (Marin PAO)

Note: This exhibit was prepared utilizing public data sources, including the Florida Geographic Data Library, US Census Data, and the Martin County Property Appraiser Data and is the work product of the Town Incorporation Work Group. This exhibit is intended for general information only. Any use of this exhibit without authorization of the Work Group is prohibited.

**Community Work Group**

For:

### INDIANTOWN INDEPENDENCE EXHIBIT 1A

