



# Special Town Council Meeting

Monday, January 24, 2022 at 6:30 pm

**1. CALL TO ORDER, PRAYER AND PLEDGE**

**2. ROLL CALL**

**3. SPECIAL MEETING ITEM**

**a. Discuss Possible Changes to Code dealing with Conservation Lands**

Exhibit: Agenda Report Number 3a

**Attachments:**

- **Agenda Report Number 3a** (20220124\_SCM\_3a\_Memo\_and\_Attachments.pdf)

**b. Trails and Greenways Recommendations**

Exhibit: Agenda Report Number 3b

**Attachments:**

- **Agenda Report Number 3b** (Agenda\_Report\_Number\_3b.pdf)

**4. ADJOURNMENT**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 3.a.**  
**Meeting Date: January 24, 2022**

**Prepared By: Matthew Stinnett, Town Manager**  
**Lisa Morrell, Special Projects Manager**

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**SUBJECT: Land Clearing and Tree Removal Code for Discussion**

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### **BACKGROUND/HISTORY:**

On January 3<sup>rd</sup> meeting, Town Council requested staff to review code revisions to Land Clearing and Tree Removal for Town Council consideration at a Special Council Meeting on January 24, 2022. The Regular Town Council Meeting scheduled for January 17, 2022, was cancelled in observance of Martin Luther King Jr. Day.

Town Council approved modifications to the Land Development Code with the unanimous recommendation from the Town's Planning and Zoning Board members to amend the Land Clearing and Tree Removal Permit codes during the September 9<sup>th</sup> and 27<sup>th</sup> meetings for first and second reading. A summary of those revisions include:

1. Textual change throughout the code from Building Official to Town Manager, or designee; Removal of Item E. entitled "*Classification of permits*" from Section 1-15.8 entitled "*Permits available; criteria for issuing permits; permit determinations; required replacements or relocations*".
2. Amending and adding the criteria text from 1-15.8 to Section 1-15.9 entitled, "*Permits, submittal requirements, Review and Determination.*" to each land clearing permit items: A. Type I permit, B. Type II permit, C. Type III permit, D. Type IV permit. These permits relate to the removal of trees and diameter breast height (dbh) unit of measure from removal and replacement.
3. Amending Item D. Type IV permit, adding (2.d.) to include the reference to Section 1-15.14 emergency tree or tree of special significance removal, whereas a Type IV permit is required for these two activities with another section of code.
4. Adding item E. Type V permits for land clearing permits for the land clearing activities related to non-removal of trees with the removal of vegetation and underbrush (less than 6' in height) with limited soil and sediment disturbance for maintenance or nuisance, firebreaks, and/or future land development activities (example, parcel survey).

A corresponding Fee Resolution, 11-2021 was adopted October 18, 2021, which provided a distinction between residential and commercial land clearing activities.

Type I-IV, Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$50 for Properties 2 acres or Less \$10 per additional acre or portion thereof
Type I-IV, Non-Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$100.00 for the 1st acre plus \$10.00 per additional acre or portion thereof
Type V, Residential Property, Non-removal of trees, land clearing permit	Permit, Review, Inspection: \$10 Building Admin Fee



	Permit, Review, Inspection: \$40 for Properties 2 acres or Less, plus \$5 per additional acre or portion thereof
Type V, Non-Residential Property, Non-removal of trees, land clearing permit	Permit, Review, Inspection: \$10 Building Admin Fee \$50.00 for the 1st acre plus \$10.00 per additional acre or portion thereof
Tree Removal – Multiple	Permit, Review, & Inspection \$40.00 per tree
Tree Removal - Type IV Permit - dead, diseased or in fire buffer	\$50.00

Below is Table 1.2.1 from Article II – Land Use and Zoning code of ordinances which includes the adopted Future Land Use Map Designations and Zoning District categories for reference in the discussion of code amendments pertaining to the origin and topic of parcels that are considered “for conservation purposes”. The Malabar Scrub Sanctuary has a future land use designation of (OSR) Open Space and Recreation with a current zoning district of (INS) Institutional. This is information that is relevant to discussion that there is no specified conservation designations in the Comprehensive Plan.

Future Land Use Map Designations		Corresponding Zoning Districts	
OSR	Open Space and Recreation	CP INS	Coastal Preservation Institutional
RR	Rural Residential	RR-65	Rural Residential
LDR	Low Density Residential	RS-21	Single Family LDR
MDR	Medium Density Residential	RS-15 RS-10 RM-4	Single Family MDR Single Family MDR Multiple Family MDR
HDR	High Density Residential	RM-6 R-MH	Multiple Family HDR Residential Mobile Home
MRO	Multiple-family Residential or Office Space	RM-4 RM-6 OI	Multiple Family HDR Multiple Family MDR Office-Institutional
OI	Office-Institutional	OI INS	Office-Institutional Institutional
CL	Commercial Limited	CL	Commercial Limited
CG	Commercial General	CG	Commercial General
R/LC	Residential and Limited Commercial	R/LC	Residential and Limited Commercial
IND	Industrial	IND	Industrial
INS	Institutional	INS	Institutional
*PUD(R)	Planned Unit Development (Residential)	PUD(R)	Planned Unit Development (Residential)
*PUD(C)	Planned Unit Development (Commercial)	PUD(C)	Planned Unit Development (Commercial)
*PUD(I)	Planned Unit Development (Industrial)	PUD(I)	Planned Unit Development (Industrial)

INS "Institutional Services." The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.

**Current Town Council Directed Discussion:**

Town staff has researched other local government agency codes related to land clearing and or tree removal codes. Findings and or comparisons reveal there is a lack of defined Town code language that provides exemptions for other government agencies and or conservation activities on public designation lands. There are a variety of local jurisdictions that code may not exist for an agency, as there is no applicability for that jurisdiction. Examples have been attached to this memo that were provided by Brevard County Environmentally Endangered Lands during the January 3, 2022, presentation to the Town Council. Town Council may direct staff to modify the Land Development Code with the Code of Ordinances through the Planning and Zoning Advisory Board for review and development for a future Town Council recommendation, in accordance with the Town's established procedures.

### **External Agency and Current Conditions:**

On January 12, 2022, The Town received a request by Brevard County Environmental Endangered Lands to extend the expired permit for Type IV permit. The Town Manager has reviewed and responded with a denial, as the permit is expired. Expired permits cannot be extended after the expiration, they are considered no longer active for further actions, modifications, or inspection.

In review of the approved and expired permit issued by the Town's Building Official on May, 17, 2021 under the previous code revision, there may be future internal after action review related to this previous issuance. The April 26, 2021 application may have lacked the level of detail required under the criteria of the previous code for approval or denial. The new code has criteria within each permit type, I-V, and the review and approval of land use and clearing authority is the Town Manager or designee.

Per the , trees removed from the 500+ acres will be sold as pulp/mulch wood at \$5.50 per ton. Revenues have an 80/20% split between Brevard County and the Florida Department of Agriculture and Consumer Services.

Within the agreement, attached, Article III entitled "Timber Included" provides a level of detail of tree removal in Unit One defined as Malabar Scrub Sanctuary and is proposed to be thinned to one to two trees per acre. Units Two and Three, defined on the map exhibits as Micco Scrub Sanctuary has an existing tree density of 100 basal area and will be thinned to 40 to 50 basal area. Unit Four is defined as Grant Flatwoods Sanctuary, with density of 120 basal area, where that unit is proposed to be thinned to 40 to 50 basal areas as well. Town staff nor the public users have yet to understand the disparity in the intensity of tree removal treatment for the units described in the agreement. Malabar Scrub will be reduced to 1 to 2 trees per acre, while the other areas will be reduced only by half of the current density from 100 to 40/50 trees per acres.

### **Summary of Key Dates**

**April 26, 2021:** Town of Malabar received a land clearing permit application from Brevard County

**May 17, 2021:** Town issued permit through the Building Department for land clearing activity in Malabar Scrub Sanctuary

**October 19, 2021:** Florida Department of Agriculture and Consumer Services Florida Forest Service State Land Timber Sale Agreement executed, with a term of 12 months, and has species nesting exclusions of activities during March 1<sup>st</sup> to June 30<sup>th</sup> and October 1 through May 15<sup>th</sup>.

**November 17, 2021:** Permit expiration date, no forward progress or inspection since issuance.

**November 29, 2021:** Town receives public inquiry to Malabar Scrub Restoration Project signage posted at the entrances to the sanctuary. Signage refers to the Brevard County Environmental Endangered Lands website for further information, which contained no information of the project.

**November 30, 2021:** Email communications regarding December commencement dates, website information to be published same day, and an announcement for public forum via Zoom on December 9, 2021 at the EEL's Program Office.

**December 1, 2021:** Information of Site work to commence the following week.

**December 2, 2021:** Staff of Malabar and EEL's discussed expired permit.

**December 2, 2021:** Brevard County Planning and Zoning Meeting – direction to County Staff to research the transfer the State of Florida lease and management plan form Brevard County to Town of Malabar.

**December 6, 2021:** Town of Malabar Council Agenda Meeting for Discussion 13.a

**December 13, 2021:** Site work scheduled to include trail areas, paused for public input approved for January 3, 2022.

**January 3, 2022:** Mike Knight, EEL's Program Manager presented project to Town of Malabar at a Regular Town Council Meeting.

**January 6, 2022:** Brevard County District 3 amends the meeting agenda for the Brevard County Commission meeting on January 11, 2022, for Malabar Scrub Sanctuary.

**January 10, 2022:** Town of Malabar Trails and Greenways Committee Meeting – discussed two alternative plans to present to Town Council for endorsement. Public constituent planned to present at the January 21<sup>st</sup> meeting with EEL's Selection and Management Committee (SMC).

**January 11, 2022:** Brevard County Commissioners discussion Malabar Scrub and Town Meeting on the January 3<sup>rd</sup> and concluded with motions approved by the County Commission for the erection of a fence to close the sanctuary access and charge the Town for the expenses if permit is not issued by January 25, 2022, seek legal injunction, seek State of Florida advisement on necessity of local jurisdiction permitting, cancel any further public information at the Town of Malabar, January 18<sup>th</sup> and 21<sup>st</sup> scheduled meetings, rescind effort to transfer.

**January 17, 2022:** Regular Town Council Meeting cancelled in observance of Martin Luther King Jr. Day.

**January 18, 2022:** Malabar Scrub Nature Sanctuary - Scrub Habitat Restoration Project Public Forum hosted at Town Hall and online via zoom at 6:30 pm. Cancelled by approved action by County Commission on January 11, 2022.

**January 21, 2022:** EEL's Selection and Management Committee (SMC) Meeting, at 1pm. The Site Visit scheduled at 9am to 11am at Malabar Scrub Sanctuary on the same days has since been cancelled.

**January 24, 2022, at 6:30 pm:** Special Town Council Meeting approved at the January 3, 2022 meeting to discuss possible code revisions, prior to the Workshop previously scheduled by consent agenda at 7:30pm at the same meeting.

Town Council and staff have received a tremendous amount inquiry from its constituents and users of the public land for the EEL's Habitat Restoration Project located in the Malabar Scrub Sanctuary, related to tree density and canopy, multiple wildlife habitats, native plant species,

and the approved passive recreation uses in the sanctuary. Currently, there is no active permit application submitted by Brevard County Environment Endangered Lands for staff to review and coordinate with for further discussion on the project to provide to Town Council.

The Trails and Greenways committee had discussed and obtain board member consensus to seek Town Council approval of two alternative plans from the public user's group at their January 10, 2022, meeting and will present to EEL's advisory committee, SMC, at their public meeting on January 21, 2022.

If a future opportunity becomes available the Trails and Greenways Committee and Town Staff welcome a staff discussion with Brevard County regarding the project intensity and detailed scope of work to work towards a balanced outcome that provides a reasonable benefit to all users, species, and agencies of the Malabar Scrub Sanctuary, a category 1 management plan as defined in the State of Florida lease #4263. Town Council could act this evening to endorse those alternative plans, Item 3.b. of the agenda, for any future opportunity.

Actions taken by the Brevard County Commissioners at the meeting on the following evening, January 11, 2022; directed County Staff to discontinue any further public information with the Town of Malabar, revoke staff researching the land lease transfer to the Town, move forward with a fence permit application to close the Sanctuary to public use until the Town issued a permit, note: no permit has been received to date of this memo, seek State of Florida input on local jurisdiction permitting, and review and seek possible further legal action(s) against the Town.

The Town's attorney has reviewed several items for the Town and is appearing tonight by phone, those researched items are not included in this agenda packet as privileged attorney-client information. On January 11, 2022, there was a public discussion regarding potential actions by Brevard County Commission directing the County Attorney to research and seek legal action against the Town. As of the date of this memo, no legal notices have been received by the Town. Additionally, the Town Attorney would advise Town Council of any legal actions sought by Brevard County, with an inquiry to The State of Florida, the 568-acre parcel landowner, for any provisions excluding the local jurisdiction. The Town is not aware of any advisement or opinions currently. The Town has reviewed the County's land management lease and grant award, which includes compliance with local jurisdiction laws, orders, permits, licenses, and other governmental requirements.

**FINANCIAL IMPACT:**

**ATTACHMENTS:**

9.14\_agenda\_Amend Article XV Relating to Tree Protection and Restoration First Reading.PDF

9.27\_agenda\_Amend Article XV Relating to Tree Protection and Restoration Final Reading.PDF

10.18\_rtc agenda Fee Resolution 11-2021.PDF

M. Knight Code amendments for Exceptions or Exemptions.PDF

Florida Department of Agriculture and Consumer Services Florida Forest Service State Land Timber Sale Agreement.PDF

**ACTION OPTIONS:**

Town Staff serves at the pleasure of the Town Council, as the authoritative governing body for the Town of Malabar. As a guide The Town Council could consider any the following motions, or any motions derived from Town Council's discussion for next steps in the process.

Motion to seek amendments through the Planning and Zoning Board to the current Land Development Code, Article XV Tree Protection and Restoration to include exemptions to the permitting process for other governmental agencies with State approved management plans for parcels located within the local jurisdiction.

Motion to amend the Town's Comprehensive Plan to include a zoning designation for Conservation land. Amend the Town's current Land Development Code, Article XV Tree Protection and Restoration to add a permit type, submission requirements, and criteria for approval for land management of clearing and tree removal for preservation and conservation activities of a valid and current land management plan for governing agencies and corresponding fee resolution. These code amendments would require the action and review of Planning and Zoning Board, advisement to for approval by Town Council, with a final review of Department of Economic Opportunity, with legal advertisement to the public and notice to The State of Florida as the property owner.

Motion to table any action until a such time Brevard County reapplies for a land clearing and tree removal permit or receipt of State of Florida opinions, or legal notices.

# TOWN OF MALABAR

## COUNCIL MEETING

### AGENDA ITEM NO: **12.b**

Meeting Date: September 14, 2021

Prepared By: Lisa Morrell, Interim Town Manager

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**SUBJECT:** Amend Article XV Related to Tree Protection and Restoration (Ordinance 2021-19)

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**BACKGROUND/HISTORY:**

Staff has compared the land clearing permits within the Land Development Code, Article XV, entitled, Tree Protection and Restoration with the Town's operations of processing permits which revealed an omission of land clearing activity of grubbing and vegetation removal and recommends the following changes for clear applicability of the review and issuance of land clearing permits and processing:

1. Textual change throughout the code from Building Official to Town Manager, or designee; Removal of Item E. entitled "*Classification of permits*" from Section 1-15.8 entitled "*Permits available; criteria for issuing permits; permit determinations; required replacements or relocations*".
2. Amending and adding the criteria text from 1-15.8 to Section 1-15.9 entitled, "*Permits, submittal requirements, Review and Determination.*" to each land clearing permit items: A. Type I permit, B. Type II permit, C. Type III permit, D. Type IV permit. These permits relate to the removal of trees and diameter breast height (dbh) unit of measure from removal and replacement.
3. Amending Item D. Type IV permit, adding (2.d.) to include the reference to Section 1-15.14 emergency tree or tree of special significance removal, whereas a Type IV permit is required for these two activities with another section of code.
4. Adding item E. Type V permits for land clearing permits for the land clearing activities related to non-removal of trees with the removal of vegetation and underbrush (less than 6' in height) with limited soil and sediment disturbance for maintenance or nuisance, firebreaks, and/or future land development activities (example, parcel survey).

These amendments clearly define the applicability of land clearing permits that were not enforced due to the types of permits established, only related to tree removal and did not address non-removal of tree, land clearing permit activity.

**P&Z Recommendation:** Unanimous Board Approval on September 8, 2021, with comments of grammatical changes, "basil" to "base" and "Town Manager or designee" and formatting. The Board advises a review and Sections 1-15-12-16 for future improvements, esp. Tree of Significance programming.

**ATTACHMENTS:**

Ordinance 2021-19  
9/8/2021 P&Z Board Minutes and or Memo

**FISCAL IMPACT:** None

**ACTION OPTIONS:** Consideration and motion to approve text amendments and additions to Land Development Code, Article XV, Tree Protection and Restoration as presented or with comments.

**ORDINANCE NO. 2021-19**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATING THE PERSON OF AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTIONS 1-15.8, 9 AND 10 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, The Town of Malabar is predominately a rural community wanting to safeguard the rural character of natural greenspace while providing for protection from natural and manmade disaster; and

**WHEREAS**, The Town Council has determined that providing regulations and permitting requirements for the land clearing and tree removal of various types of commercial and residential purposes under permitted circumstances will benefit the health, safety, and welfare of the citizens of the Town while preserving and protecting the natural greenspace rural character of Malabar.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Malabar, Brevard County, Florida, that

**SECTION 1.** Article XV, beginning with Section 1-15.7 and proceeding throughout the entire chapter that all references to the Building Official or Engineer shall be changed to "Town Manager or Designee".

**SECTION 2.** Section 1-15.8.B of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

"Section 1-15.8.B.1. *Criteria for issuing a land clearing or tree removal...*

...

**SECTION 3.** Section 1-15.8.B. of Article XV of the Land Development Code of the Town is hereby amended by adding a new subsection "4.", which new subsection shall read as follows:

"Section 1-15.8.B."4." The Town Manager or designee shall consider accessibility to the property and may require a culvert for property access, whether temporary or permanent, prior to the issuance of any permit type in this section.

...

**SECTION 4.** Section 1-15.8.E. of Article XV of the Land Development Code of the Town is hereby deleted in its entirety.

~~E. *Classification of permits:* Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:~~

~~1. Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.~~

~~2. Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.~~

~~3. Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.~~

~~4. Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).~~

**SECTION 5.** Section 1-15.9. of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

**“Section 1-15.9. Permits, submittal requirements, Review and Determination.**

Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:

**A. Type I permit.**

Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town ~~Manager Administrator, or his~~ designee, concurrent with the submittal of a development plan as required by the Land Development Code:

- a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
- b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type pf professional as approved by the Town Administrator or his designee.

2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

**B. Type II permit.**

Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town ~~Manager Administrator, or his~~ designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:

- a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.

2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

**C. Type III permit.**



Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.

1. *Submittal*: Projects that require a Type III permit shall submit the following to the Town ~~Manager Administrator~~ or his designee, concurrent with the submittal of a building permit application:

a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.

2. *Review and determination process*: The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger. After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).

1. *Submittal*: Tree removal requiring a Type IV permit shall submit two copies of the following to the Town ~~Manager Administrator~~, or his designee:

a. Permit application demonstrating compliance with one (1) or more of the criteria below.

b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).

c. Tree plan if applicable.

2. *Review and determination process*: The tree removal permit shall only be granted where at least one of the following criteria is met:

a. *Use*. Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.

b. *Proximity to structures*. The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.

c. *Thinning*. The removal of such tree is beneficial to the enhanced growth of other trees on site.

d. A type VI permit is required for the removal of any designated tree of special significance or emergency tree removal as defines in Section 1-15.14.

E. *Type V permits*

Type V permits shall be required for any use of a motorized and or rotary equipment method to remove underbrush and vegetation less than six (6) feet in height, and not defined as a tree, for the propose of unimproved property maintenance as required in the Town's code of ordinance of nuisance vegetation and or firebreak protection of property in conjunction with any development plan required by the Land Development Code

1. *Submittal:* Tree removal requiring a Type V permit shall submit two copies of the following to the Town ~~Manager Administrator~~, or his designee:

a. Survey of the property. Permit application demonstrating compliance with one (1) or more of the criteria below.

b. A sketch showing location and a general description of removal of underbrush and vegetation less than six (6) feet in height. This permit does not permit the removal of any trees.

2. *Review and determination process:* The permit shall only be granted where at least one of the following criteria is met:

a. Use. Reasonable effort has been made to minimize the impact of root and soil sediment and the topology of the property for the purpose of clearing nuisance and overgrown vegetation to maintain or gain access for development activities, reduce a nuisance to abutting property owners and rights-of way, or reduce fire hazards for the protection of life and property."

...

**SECTION 6. REMAINDER OF CODE:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the remainder of the Chapter remain the same.

**SECTION 7. CODIFICATION:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1 of this ordinance to be incorporated into the Town's Land Development Code.

**SECTION 8. SEVERABILITY:** In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**SECTION 9. CONFLICT:** All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**SECTION 10. EFFECTIVE DATE:** The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ . The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this 27th day of September 2021.



# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 8.d.  
Meeting Date: September 27, 2021

Prepared By: Lisa Morrell, Interim Town Manager

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**SUBJECT:** 2<sup>nd</sup> Reading Amend Art XV Related to Tree Protection and Restoration (Ordinance 2021-19)

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**BACKGROUND/HISTORY:**

Staff has compared the land clearing permits within the Land Development Code, Article XV, entitled, Tree Protection and Restoration with the Town's operations of processing permits which revealed an omission of land clearing activity of grubbing and vegetation removal and recommends the following changes for clear applicability of the review and issuance of land clearing permits and processing:

1. Textual change throughout the code from Building Official to Town Manager, or designee; Removal of Item E. entitled "*Classification of permits*" from Section 1-15.8 entitled "*Permits available; criteria for issuing permits; permit determinations; required replacements or relocations*".
2. Amending and adding the criteria text from 1-15.8 to Section 1-15.9 entitled, "*Permits, submittal requirements, Review and Determination.*" to each land clearing permit items: A. Type I permit, B. Type II permit, C. Type III permit, D. Type IV permit. These permits relate to the removal of trees and diameter breast height (dbh) unit of measure from removal and replacement.
3. Amending Item D. Type IV permit, adding (2.d.) to include the reference to Section 1-15.14 emergency tree or tree of special significance removal, whereas a Type IV permit is required for these two activities with another section of code.
4. Adding item E. Type V permits for land clearing permits for the land clearing activities related to non-removal of trees with the removal of vegetation and underbrush (less than 6' in height) with limited soil and sediment disturbance for maintenance or nuisance, firebreaks, and/or future land development activities (example, parcel survey).

These amendments clearly define the applicability of land clearing permits that were not enforced due to the types of permits established, only related to tree removal and did not address non-removal of tree, land clearing permit activity.

P&Z Recommendation was unanimous and grammatical and formatting changes were made before this reading. This was advertised in Florida Today on September 17, 2021.

**ATTACHMENTS:**

Ordinance 2021-19

**FISCAL IMPACT:** None

**ACTION OPTIONS:**

Action on 2<sup>nd</sup> Reading of Ord 2021-19

**ORDINANCE NO. 2021-19**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE XV, RELATED TO UPDATING THE PERSON OF AUTHORITY TO THE TOWN MANAGER OR DESIGNEE THROUGHOUT THE ORDINANCE; PROVIDING FOR NEW REQUIREMENTS IN SECTIONS 1-15.8, 9 AND 10 RELATED TO LAND CLEARING AND TREE REMOVAL PERMITTING PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, The Town of Malabar is predominately a rural community wanting to safeguard the rural character of natural greenspace while providing for protection from natural and manmade disaster; and

**WHEREAS**, The Town Council has determined that providing regulations and permitting requirements for the land clearing and tree removal of various types of commercial and residential purposes under permitted circumstances will benefit the health, safety, and welfare of the citizens of the Town while preserving and protecting the natural greenspace rural character of Malabar.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Malabar, Brevard County, Florida, that

**SECTION 1.** Article XV, beginning with Section 1-15.7 and proceeding throughout the entire chapter that all references to the Building Official or Engineer shall be changed to “Town Manager or Designee”.

**SECTION 2.** Section 1-15.8.B of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

“Section 1-15.8.B.1. *Criteria for issuing a land clearing or tree removal...*

...

**SECTION 3.** Section 1-15.8.B. of Article XV of the Land Development Code of the Town is hereby amended by adding a new subsection “4.”, which new subsection shall read as follows:

“Section 1-15.8.B.”4”. *The Town Manager or designee shall consider accessibility to the property and may require a culvert for property access, whether temporary or permanent, prior to the issuance of any permit type in this section.*

...

**SECTION 4.** Section 1-15.8.E. of Article XV of the Land Development Code of the Town is hereby deleted in its entirety.

**SECTION 5.** Section 1-15.9. of Article XV of the Land Development Code of the Town is hereby amended to read as follows:

**“Section 1-15.9. *Permits, submittal requirements, Review and Determination.***

Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:

A. *Type I permit.*

Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a development plan as required by the Land Development Code:

- a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
- b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type of professional as approved by the Town Administrator or his designee.

2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

B. *Type II permit.*

Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:

a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.

2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

C. *Type III permit.*

Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.

1. *Submittal:* Projects that require a Type III permit shall submit the following to the Town Manager or designee, concurrent with the submittal of a building permit application:

a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.

2. *Review and determination process:* The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger. After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).

1. *Submittal*: Tree removal requiring a Type IV permit shall submit two copies of the following to the Town Manager or designee:

- a. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non-single family).
- c. Tree plan if applicable.

2. *Review and determination process*: The tree removal permit shall only be granted where at least one of the following criteria is met:

- a. *Use*. Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.
- b. *Proximity to structures*. The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.
- c. *Thinning*. The removal of such tree is beneficial to the enhanced growth of other trees on site.
- d. A type VI permit is required for the removal of any designated tree of special significance or emergency tree removal as defines in Section 1-15.14.

E. Type V permits

Type V permits shall be required for any use of a motorized and or rotary equipment method to remove underbrush and vegetation less than six (6) feet in height, and not defined as a tree, for the propose of unimproved property maintenance as required in the Town's code of ordinance of nuisance vegetation and or firebreak protection of property in conjunction with any development plan required by the Land Development Code

1. *Submittal*: Tree removal requiring a Type V permit shall submit two copies of the following to the Town Manager or designee:

- a. Survey of the property. Permit application demonstrating compliance with one (1) or more of the criteria below.
- b. A sketch showing location and a general description of removal of underbrush and vegetation less than six (6) feet in height. This permit does not permit the removal of any trees.

2. *Review and determination process*: The permit shall only be granted where at least one of the following criteria is met:

- a. Use. Reasonable effort has been made to minimize the impact of root and soil sediment and the topology of the property for the purpose of clearing nuisance and overgrown vegetation to maintain or gain access for development activities, reduce a nuisance to abutting property owners and rights-of way, or reduce fire hazards for the protection of life and property."

...

**SECTION 6. REMAINDER OF CODE:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the remainder of the Chapter remain the same.

**SECTION 7. CODIFICATION:** It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of section 1 of this ordinance to be incorporated into the Town's Land Development Code.

**SECTION 8. SEVERABILITY:** In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**SECTION 9. CONFLICT:** All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

**SECTION 10. EFFECTIVE DATE:** The ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this 27<sup>th</sup> day of September 2021.

**TOWN OF MALABAR**

(seal)

By: \_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

\_\_\_\_\_  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

Approved as to form and legal sufficiency by:

Karl W. Bohne, Jr.  
Karl W. Bohne, Jr., Town Attorney

Public Hearing at P&Z: 9/08/2021  
Council First Reading: 09/14/2021 Vote: 5 to 0.  
Council Second Reading: 09/27/2021



## RESOLUTION 11-2021

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR AN UPDATED APPLICATION FEE REQUIREMENTS FOR TREE REMOVAL ACTIVITIES FOR BOTH RESIDENTIAL AND COMMERCIAL PURPOSES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town of Malabar's Code of Ordinances requires assessment of various administrative and permit fees; and

**WHEREAS**, the Town of Malabar's Ordinances and Land Development Code require that the Town Council for the Town of Malabar impose said administrative fees; and

**WHEREAS**, the Town Council of the Town of Malabar has determined that a revision to the administrative fee schedule is appropriate to update fees to cover the actual costs of professional review, administrative time, legal advertising and mailing costs for notices.

**NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA**, as follows:

**SECTION 1. ADMINISTRATIVE FEES.** The Town of Malabar does hereby revise administrative fees in accordance with the Town of Malabar's Code of Ordinance and Land Development Code to reflect the actual costs more accurately in 2021.

**A.**

Conditional Use Permit Application	\$175.00 plus site plan review fee
Contractor Registration Fee:	\$40.00
Property Culvert Permit:	\$100.00 plus actual Engineering Plan
Development Agreement:	\$500.00
Road Construction Application:	Street Length up to 200 feet - \$800.00 Street Length up to 400 feet - \$825.00 Street Length up to 600 feet - \$890.00 Street Length up to 800 feet - \$930.00 Street Length up to 1000 feet - \$1010.00 Street Length up to 1200 feet - \$1080.00 Street Length up to 1400 feet - \$1120.00
Final Plat S/D Review	\$1,200.00
Future Land Use Map Designation Change:	\$300.00 plus rezoning fee
Golf Cart Registration	One-time fee and no renewal fee

Land Clearing (Ref. LDC Article XV, Section 1-15.8 – 1-15.10):	see below
Type I-IV, Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$50 for Properties 2 acres or Less \$10 per additional acre or portion thereof
Type I-IV, Non-Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$100.00 for the 1st acre plus \$10.00 per additional acre or portion thereof
Type V, Residential Property, Non-removal of trees, land clearing permit	Permit, Review, Inspection: \$10 Building Admin Fee Permit, Review, Inspection: \$40 for Properties 2 acres or less, plus \$5 per additional acre or portion thereof
Type V, Non-Residential Property, Non-removal of trees, land clearing permit	Permit, Review, Inspection: \$10 Building Admin Fee \$50.00 for the 1st acre plus \$10.00 per additional acre or portion thereof
<del>Type IV Emergency Tree Removal Per LDC Article XV, Section 1-15.7(B.)(5.)</del>	<u>See Tree Removal</u>
Land Fill (Ref. LDC Article V, Section 1-5.22):	See below
Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$50 for Properties 2 acres or Less \$10 per additional acre or portion thereof
Non-Residential Property	Permit, Review, Inspection: \$30 Building Admin Fee \$100 for 1st acre plus \$10 per additional acre or portion thereof
Planned Unit Development (PUD) review:	\$900.00 plus \$40.00 per acre
Planned Unit Development (PUD) final:	\$900.00 plus \$40.00 per acre
Pond Permit:	Engineering costs only for ponds <1/4 acre; \$25.00 per 1000 sq. ft. of pond area for ponds over 1/4 acre in size plus engineering costs
Pre-Construction Conference for S/D or Commercial Development	\$300.00
Preliminary Plat S/D Review	\$1,500.00
Request for Council Action on an Item not specifically provided for in the administrative fee schedule regarding matters of land development	\$300.00

Rezoning Request: Commercial	\$1,500.00 for the 1st acre plus \$10.00 per each additional acre or portion thereof
Rezoning Request: Residential	\$625.00 for the 1st acre plus \$10.00 per each additional acre or portion thereof
Road Improvement Waiver Application - Commercial Purposes	\$1,500.00
Road Improvement Waiver Application - Residential Purposes	<u>\$300.00</u>
Road Naming / Renaming Requests:	\$50.00
Road Vacate and Abandonment Requests:	\$425.00
Site Plan minor (including SFR)	\$150.00
Site Plan Pre-Application Conference (mandatory): except SFR (Ref Article VII, Sec 1-7.1.5)	\$500.00
Site Plan Review:	\$900.00 for 1st acre plus \$50 for each additional acre or portion of acre
Special Exception:	\$175.00 plus site plan review fee
Subdivision S/D or Commercial Development Pre-Ap Conference (mandatory)	\$1,500.00
Tree Removal – Multiple	<u>Permit, Review &amp; inspection \$40.00 per tree</u>
Tree Removal - Type IV Permit - dead, diseased or in fire buffer – non-invasive only	<u>50</u>
Variance Request to Board of Adjustment: Commercial	\$1,750.00
Variance Request to Board of Adjustment: Residential	\$800.00
Written zoning verification or for the availability of Town Services	\$50.00

B. No permit, certificate, or other related document, and no inspections, public notice, or other action shall be instituted until such fees, costs, and charges have been paid. When in accordance with Town codes, a fee is paid, and registration submitted, there shall be no return or rebate of any funds so received, regardless of the Town's determination in the subject matter. All fees, costs, and charges shall be, upon collection, deposited in the appropriate fund of the Town.

**SECTION 2. CONFLICTS.** All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this resolution.

**SECTION 3. SEVERABILITY.** In the event a court of competent jurisdiction shall hold or determine that any part of this resolution is invalid or unconstitutional, the remainder of the resolution shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this resolution without

said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

**SECTION 4. EFFECTIVE DATE.** This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member \_\_\_\_\_. The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote; the vote was as follows:

Council Member Marisa Acquaviva \_\_\_\_

Council Member Brian Vail \_\_\_\_

Council Member Steve Rivet \_\_\_\_

Council Member David Scardino \_\_\_\_

Council Member Danny White \_\_\_\_

This Resolution was then declared to be duly passed and adopted this 18th day October 2021.

**TOWN OF MALABAR**

By:

(seal)

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

\_\_\_\_\_  
Debby Franklin, C.M.C.  
Town Clerk/Treasurer

Approved as to Form and Content:

Karl W. Bohne, Jr.  
Karl W. Bohne, Jr., Town Attorney

PBC has exemptions built into our Vegetation Preservation and Protection Ordinance (<http://www.pbcgov.com/uldc/Article14.htm#C8EX>)

The applicable exemptions are as follows:

**Section 8 Exemptions ...**

**C. Forest Management Activities**

Selective tree removal for forest management activities as defined in the current Forest Management Plan as approved by the State of Florida Division of Forestry. ...

**I. Parks and Recreation**

Alterations of vegetation pursuant to an adopted management plan for government maintained parks, recreation areas, wildlife management areas, conservation areas, and preserves, excluding new construction or parcel improvement.

Best Wishes & Happy New Year

*Steve*

Steven Pisano  
Environmental Manager  
Natural Resources Stewardship Division  
Dept. of Environmental Resources Management  
Palm Beach County Board of County Commissioners  
2300 North Jog Road, 4th Floor  
West Palm Beach, FL 33411-2743  
561-233-2521



PALM BEACH COUNTY  
**NATURAL  
AREAS**

## Sec. 30-8.7. - Permits for tree removal; mitigation.

- A. *Removal or relocation permits.* Except as provided below, no living regulated tree may be removed or relocated without a removal permit and mitigation as provided for in this section. Only the tree advisory board may approve or deny the removal, relocation or replacement of champion trees.
- B. *Exemptions.*
1. On property with single-family dwellings, permits shall be required only for the removal of champion or heritage trees.
  2. Removal of loblolly or slash pines less than 20 inches in diameter from a natural or naturalized landscape shall not require mitigation planting, unless the removals result in a uniform tree density on the site of less than one tree per 900 square feet of unpaved area. Where resulting tree density would be less, sufficient mitigation trees meeting the standard of section 30-8.10 shall be established to achieve the specified minimum density.
  3. Removal of regulated trees in connection with ecosystem management or restoration on parcels with conservation easements, in conservation management areas or on parcels managed as nature parks or preserves, provided the following criteria are met:
    - a. A plan for the removal and revegetation of the area has been approved by the city manager or designee;
    - b. The only trees that may be removed are of the following species: Loblolly Pine, Slash Pine, Water Oak, Laurel Oak, Sweetgum, Sugarberry, and any species not native to Alachua County;
    - c. The tree removal is being done in furtherance of restoration of a natural community or communities appropriate to the site as indicated by soils, remnant vegetation, and hydrological and geological conditions;
    - d. The applicant has demonstrated that after the removals, the land will be maintained in a manner that promotes the continuation of the restored natural community; and
    - e. The plan has been approved by the nature centers commission.
  4. For the immediate protection of the health, safety, or welfare of the public, trees may be removed without obtaining a permit in advance. However, the property owner or its authorized agent shall file a permit application during the next city work day. Permit approval shall be granted, provided the trees removed are mitigated in accordance with this code.
- C. *Methods of mitigation.* Mitigation is allowed by two methods: 1) mitigation trees (on an inch-for-inch basis or as otherwise specified); and 2) mitigation payment. The amount of mitigation is as specified in subsections D. and E. below.
1. *Mitigation trees.* Mitigation trees shall be of high quality shade species as identified on the Gainesville tree list and sited in accordance with the requirements of section 30-8.3.A. The installation of new trees for a development as required by this chapter may count as mitigation for trees removed from the site, except where those removed trees are of a high-quality species. Increasing the diameter of trees required to be planted with a development shall not be used to meet mitigation requirements. The preference is for mitigation trees to be planted on the site, but where it is demonstrated that no space is available, mitigation trees may be planted offsite within city limits as approved by the city manager or designee.
  2. *Mitigation payment.* Mitigation payment shall be based on tree appraised value, or as otherwise specified in this code. Payment shall be made prior to the approval of a final development order, or prior to issuance of a certificate of occupancy for any development requiring only building permits. Mitigation payments received by the city shall be deposited in the city tree mitigation fund, which must be used in accordance with this

<p>High quality heritage trees, in fair or better condition.</p>	<p>Mitigation payment based on tree appraised value, limited to three trees per acre averaged over the entire site. If more than three trees per acre in this category are located on the site then the trees with the highest tree appraised value throughout the site shall be used to calculate the payment. High quality heritage trees proposed for removal in excess of the overall average of three per acre shall require mitigation trees on an inch-for-inch on a diameter basis.</p>
<p>Heritage trees of other than high quality species, in fair or better condition, excluding laurel oaks and water oaks.</p>	<p>Mitigation trees on an inch-for-inch diameter basis.</p>
<p>Any heritage trees in less than fair or better condition; any heritage laurel oak or water oak; and any other regulated tree.</p>	<p>Mitigation trees consisting of two trees of high quality shade species established for each tree removed.</p>

E. *Removal and mitigation of regulated trees not part of subdivision or development plan approval.* Any person desiring to remove or relocate a regulated tree, except tree removal approved as part of subdivision or development plan approval, shall file a tree removal permit with the city manager or designee. As a condition to granting a permit, the applicant shall mitigate each tree being removed. The following requirements apply:

1. Permit applications shall include the name of the property owner, address from which tree will be removed, tree species and diameter, and reason for removal of the tree. The permit application shall be signed by the property owner and, if applicable, its authorized agent. Applications for tree removal shall also include a scaled drawing of the site showing tree size and location, and a statement of how any other regulated trees are to be protected during any approved tree removal and any associated construction or clearing, or grade changes. The city manager or designee shall attempt to verify the information contained in the application and shall either approve or deny the application as to each regulated tree proposed to be removed.
2. Where construction is associated with the tree removal, construction drawings shall be submitted to the building department and application for building permits made before any trees are removed.
3. The requirements for mitigation of regulated trees not associated with development plan or subdivision plat review are as follows:

CATEGORY	MITIGATION
<p>Single-Family Dwellings</p>	

The city manager or designee may require the applicant to provide verification of the findings in the form of a written report signed and sealed by an appropriate licensed professional within the State of Florida. Regulated trees shall not be removed, damaged or relocated for the purpose of installing, replacing or maintaining utility lines and connections unless no reasonably practical alternative is available, as determined by the city manager or designee. Where a tree may be preserved by cutting the tree roots instead of removing a tree, that strategy shall be preferred.

- G. *Natural emergencies or disasters.* In the case of natural emergencies or disasters such as hurricanes, windstorms, floods or other disasters, issuances of permits for the removal of damaged trees may be waived by the city manager or designee. Such waiver may not be for an indefinite period and shall expire when the city manager or designee determines that emergency conditions have ended.
- H. *Commercial tree removal permits.* Commercial tree removal permits may be granted for the removal of trees associated with forestry management, tree harvest and other similar commercial purposes in accordance with the requirements of this subsection.
1. *Applicability.* Commercial tree removal permits may be requested in lieu of other tree removal permits required by this section where no development of the property is intended. Where development of the property is planned, the petitioner shall address tree removal within the development plan review or normal tree removal processes.
  2. *Permit granting authority.* The city manager or designee or the development review board have authority to grant commercial tree removal permits as described below.
  3. *Receipt of request.* Owners of property may request the appropriate authority to grant a permit for the commercial removal of trees by filing such an application with the city, on forms supplied by the city, together with the appropriate fee. The request shall be accompanied with the following information supplied by the applicant:
    - a. Suitability of the trees for harvest.
    - b. Harvesting methods to be used.
    - c. Sedimentation and erosion control measures to be used.
    - d. Plan of property showing location of required buffers next to water bodies and property lines and tree canopy to remain as applicable.
    - e. Tree protection measures for trees to remain.
    - f. Species of trees to be used for replacement.
  4. *Notice.* Whenever a property is under consideration for a permit, except any property designated agriculture on the future land use map, all owners of property adjacent to the property shall be given notice by mail. Such notice shall be mailed at least 15 calendar days prior to the granting of the permit. For the purpose of this notification, an owner of property shall be deemed to be the person who, by his/her address, is so shown on the tax rolls of the city. If any such property is part of the common area of a condominium, notice shall be sent to all of the condominium unit owners as shown on the latest tax rolls. Additionally, the property under consideration shall also have a sign posted at least five calendar days prior to the date the permit is to be granted. The sign shall specify that the property is under consideration for a permit allowing tree removal for commercial purposes and specify the date the permit is to be granted.
  5. *Procedure for review.* If less than 20 percent of the noticed property owners file a written objection to the proposed tree removal within 15 calendar days of the mailing of the notice, the commercial tree removal permit may be issued provided all other provisions of this section and this chapter have been met.



portions of the site under consideration. The city manager or designee, or development review board, as appropriate, shall be guided by, but not restricted to, the following criteria in imposing such additional conditions:

- a. The need to provide buffers to adjacent developed property;
  - b. The need to protect soils highly susceptible to soil erosion as identified by the soil survey of the county;
  - c. The need to protect slopes in excess of ten percent, particularly near creeks and other bodies of water;
  - d. The need to protect existing wetlands, floodplains and flood channels and other environmentally sensitive areas as shown on existing maps, photographs and other reliable and available sources; and
  - e. The need to preserve endangered, threatened or special concern animal and vegetative species, habitats and communities, rare hardwood hammocks or champion trees as identified from competent sources.
8. *Removal of trees specifically planted or managed for harvest.* Where environmental and other factors limit the removal of trees on 75 percent or more of the site under consideration, the commercial tree removal permit may be denied. However, factors identified above may not be used to unduly prohibit the harvest of trees where it is demonstrated that the trees to be harvested were specifically planted for that purpose.

(Ord. No. 170971, § 3, 2-21-19)

**Sec. 54-585. - Exemptions.**

SHARE LINK TO SECTION  
PRINT SECTION  
DOWNLOAD (DOCX) OF SECTION  
EMAIL  
SECTION  
COMPARE VERSIONS

(l)

*Exemptions.* The following exemptions exist from the provisions of this article:

(a)

*Exotics.* The prohibitions in Section 54-584(1) shall not apply to any Tree species on the most recent Florida Exotic Pest Plant Council Category I list of invasive species. In addition, the prohibitions in Section 54-584(1) shall not apply to any one of the following Tree species: Brazilian Pepper (*Schinus terebinthifolius*), Punk or Melaleuca (*Melaleuca quinquenervia*), Australian Pines (*Casuarina* spp.), Carrotwood (*Cupaniopsis anacardioides*), Chinaberry (*Melia azedarach*), Chinese Tallow (*Sapium sebiferum*), or any Tree species prohibited by the Invasive Plant Species Ordinance No. 90-01, as amended (Chapter 54, Article XIX of the Sarasota County Code of Ordinances).

(b)

*Emergencies.* The prohibitions in Section 54-584(1) shall not apply during Emergencies as described herein:

1.

No Tree Permit shall be required for governmental personnel or agencies in the performance of their official duties during an Emergency declared by the Board as provided herein.

2.

No Tree Permit shall be required when necessary to reestablish electric service during or immediately after a severe weather event or other electrical Emergency situation.

3.

When it is necessary to expedite the removal of damaged or destroyed Trees in the interest of public safety, health, and general welfare following high winds, storms, hurricanes, tornadoes, floods, freezes, fires or other manmade or natural disasters, the Board may by resolution declare an Emergency, and suspend the requirements of this article for a period of up to 30 days in the affected areas.

(c)

*Agricultural Activities.* The prohibitions in Section 54-584(1) shall not apply to a Lot or portion thereof that is classified by the County Property Appraiser prior to any Tree removal as bona fide agricultural land under the agricultural assessment provisions of the Florida Right to Farm Act, F.S. § 193.461, where Tree Removal is undertaken or Irreparable Injury is caused solely for Agricultural or Silvicultural purposes. This exemption shall not apply to any Tree Removal or Irreparable Injury in preparation for, or in anticipation of, any Development or any construction of

This exemption does not apply to any Grand Tree and this exemption shall not apply within the Myakka River Protection Zone or a CRPZ.

(g)

*Roads, Utilities, and Stormwater Maintenance.* Tree Removal and Tree Relocation necessary for the maintenance of existing roads, utilities, landscaping, or stormwater facilities within rights-of-way and easements, or to comply with state technical specifications (e.g., for sight clearance), performed or contracted by a duly constituted communication, water, sewerage, stormwater, electrical, other utility or government entity or pursuant to an approved Sarasota County Neighborhood Initiative Grant for work within a public right-of-way. This exemption does not apply to any Grand Tree and this exemption shall not apply within the Myakka River Protection Zone or a CRPZ.

(h)

*Pruning and Maintenance.* The prohibitions in Section 54-584(1) shall not apply to Government personnel conducting Pruning and maintenance activities. No Tree Permit is required for the Pruning and maintenance of any Tree on a private Lot, except when the Tree is located within a CRPZ or Right-of-Way, or if the Pruning of a Grand Tree does not meet the standards provided in Section 54-588.

(i)

*Tree Planting.* Except in a Right-of-Way, no Tree Permit shall be required for the planting of any Tree.

(j)

*Habitat Management and Restoration.* Tree Removal and Tree Relocation necessary for native habitat management and environmental restoration activities conducted by a governmental agency. This exemption does not apply to Grand Trees.

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
FLORIDA FOREST SERVICE  
STATE LAND TIMBER SALE AGREEMENT

THIS AGREEMENT, made this 19th day of October, 2021, between the STATE of FLORIDA, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, FLORIDA FOREST SERVICE, a State Agency, of Tallahassee, Florida, hereinafter called the SELLER, and Bodaca Timber Inc, PO BOX 1173,, Kathleen, FL , 33846 hereinafter call the PURCHASER.

**ARTICLE I**

**Preamble**

For and in consideration of the promises and agreements hereafter contained, SELLER agrees to sell and permit PURCHASER to cut and PURCHASER agrees to purchase, cut and remove such cut timber specified in this Agreement, subject to the agreement provisions hereof.

**ARTICLE II**

**Description**

- A. This sale shall be known as Scrub 21/22 Timber Sale.
- B. This sale area of 1127 acres, more or less, within the Brevard County EEL is located in: Section 36, Township 28 South, Range 37 East; Sections 10, 12, 14 and 15, Township 30 South, Range 37 East; Sections 7, 8 and 18, Township 30 South, Range 38 East; Brevard County, Florida.
- C. The boundaries of the sale area, and any subdivision thereof, are as shown on the attached sale area map, which is made a part hereof.

**ARTICLE III**

**Timber Included**

This agreement includes only that timber within the sale area as described in Article II B and C, designated in the following manner by a representative of SELLER: Unit one is located on Malabar Scrub Sanctuary and consists of mature natural scattered slash pines and some sand pines. Trees will be thinned leaving one to two trees per acre. Units two and three consist of mature planted slash pines. The current tree density is 100 basal area. Trees will be thinned down to 40 to 50 basal area. Unit four is located on Grant Flatwoods Sanctuary. Unit four consists of mature natural slash and longleaf pines at a density of 120 basal area. Trees will be thinned down to 40 to 50 basal area. Leave trees in all units should be healthy, good formed trees and not be damaged by harvesting operations. Loggers should favor longleaf pines, flat-topped and turpentine trees as leave trees. Units two, three and four will also have a clear-cut of all pines located within 20 feet of the existing firelines and roads. Pines with a DBH of 16 inches or greater will not be harvested. Boundaries are natural stand changes, roads, firelines, trails, and utility right of ways.

**ARTICLE IV**

**Condition of Sale**

A. PURCHASER agrees to cut and remove timber included in this Agreement in strict accordance with all conditions and requirement contained herein.

The Forester-In-Charge shall administer this Agreement in consultation with the local land manager if this Agreement has been executed by the SELLER on behalf of another state, county, local, or municipal agency. The Forester-In-Charge has been designated as the SELLER'S representative, and any questions regarding this Agreement and associated harvesting operations shall be addressed directly to the Forester-In-Charge. The PURCHASER is not expected to comply with requests from any source other than the Forester-In-Charge, or their successor or superior officer.

B. PURCHASER hereby agrees to pay SELLER for all timber to be cut as follows:

**Product (per ton)**

**\$5.05/Pulpwood/Mulchwood**

**Each timber sale settlement is to be written in two separate checks in the following percentages: 80% to Brevard County and 20% to the Florida Department of Agriculture and Consumer Services. All checks should be sent to the Forester-In-Charge along with all other settlement information.**

All loads of wood removed are to be weighed on state certified scales and each scale ticket is to be dated and include gross, tare and net weights. The PURCHASER will be provided with an adequate

amount of two-part (Field Copy/Driver Copy) Florida Forest Service State Forest Haul Tickets and weekly harvesting production ledgers for the sale by the Forester-in-Charge. Each load removed will have a State Forest Haul Ticket assigned to that load. The Field Copy will be handled as directed by the Forester-in-Charge. Each Driver Copy will be returned along with the corresponding market weight scale ticket for all loads removed during each week and with a check for the appropriate wood settlement payment within ten (10) days of the week of harvest to the Forester-in-Charge. In addition, each wood settlement will have a copy of that harvesting operation's weekly production ledger attached.

The PURCHASER shall keep the Forester-In-Charge informed as to the delivery point of all timber cut on the sale and the name of the producer shipping the wood. The Florida Forest Service shall be entitled to be present at the weighing of any wood produced from lands covered by this Agreement and may during regular business hours inspect the PURCHASER'S books and records in connection therewith.

C. PURCHASER has furnished a Surety Bond issued by or Check No. 5808, to serve as a security deposit, in the amount of five thousand dollars (\$5,000.00), receipt of which is hereby acknowledged. Said security deposit shall be refunded to PURCHASER at the termination of this Agreement, provided all of its terms have been complied with to the satisfaction of the SELLER. This surety bond or cashier's check furnished by PURCHASER, shall provide protection to SELLER and to all laborers and material person(s) who furnish labor and materials to PURCHASER for work performed under the terms of this Agreement, in accordance with Section 255.05, Florida Statutes.

If a surety bond is provided by PURCHASER, it shall include a provision whereby the surety company waives notice of any alteration or extension of time made by SELLER. The bond will remain in force beyond the initial period of the Agreement in accordance with any extensions granted by SELLER for cause.

D. The term of this Agreement and the terms for which the parties hereto are bound shall be from the final execution date of this Agreement until twelve (12) months. Extensions to this term will be made whenever the Forester-In-Charge has deemed it necessary to suspend harvesting operations on the sale area due to adverse weather conditions, or other extreme contingencies. The PURCHASER will be notified by the Forester-In-Charge as to when harvesting operations may resume, and the extended term will then be reduced accordingly by the number of days until the PURCHASER resumes harvesting operations. Requests for additional extensions must be made by PURCHASER, in writing, at least fifteen (15) days prior to the Agreement termination, with the reasons for request stated therein.

E. PURCHASER or PURCHASER'S representative agrees to have a conference with the Forester-In-Charge before cutting begins, in order to discuss logging plans, roads to be used for hauling, etc.

F. Stumps shall be no higher than six inches (6") above the ground except where otherwise authorized by the Forester-In-Charge. No stump will be cut so low as to eliminate the paint mark if such mark has been applied in accordance with Article III.

G. Title to all designated trees left standing and all portions of trees felled but not utilized prior to the expiration of this Agreement, or any extensions thereof, shall remain with SELLER.

H. All other timber in the Agreement area under valid claims of another agreement or not designated in accordance with Article III is excluded from this sale. All the dead stump wood and lightwood in the Agreement area is also excluded from this sale. The PURCHASER must not remove any dead pines from the area.

I. The designated timber to be cut and utilized shall equal or exceed the following minimum dimensions: Pine pulpwood/mulchwood shall have no minimum butt diameter and shall have at least 16 feet in merchantable length to a 2 inch top diameter inside bark.

J. No tops, limbs or butts shall be left within three feet (3') of living trees. All "lodged" trees shall be freed and removed the same day such "lodging" occurs.

K. Due care shall be exercised against starting and spreading fires during the cutting operations by PURCHASER and/or PURCHASER'S employees. PURCHASER shall be held liable for all damages caused by such fires.

L. All utility lines, ditches and fences located within or immediately outside the exterior boundaries of the sale area shall be protected from damage by logging operations, and if damaged, shall be repaired immediately by and at the expense of PURCHASER. When in the judgment of the Forester-In-Charge, it is necessary to avoid risk or damage from logging operations, the PURCHASER may be required to move fences from one location to another without compensation.

M. The Forester-In-Charge shall designate the location of all loading ramps. Loading of log trucks is not permitted on paved or graded roads. SELLER reserves the right to designate location of skid trails.

N. Skidding trees down roads, trails and firebreaks is prohibited. Also, these areas will be kept free of logs, tops, brush and debris resulting from PURCHASER'S operations hereunder, and any road, trail or firebreak used by PURCHASER in connection with this sale that is damaged by skidding or logging equipment shall be repaired promptly by PURCHASER at PURCHASER'S expense to its original condition. SELLER retains the right to close down timber sale operations in inclement weather if logging damage to the sale area is deemed by the Forester-In-Charge to be too severe.

O. PURCHASER shall guard the gates used by PURCHASER'S operations hereunder, in any fences enclosing pasture lands, at all times when such gates are open and used by PURCHASER to prevent any cattle, horses or other animals from passing through them, and shall close such gates after using them.

P. When the PURCHASER deems it necessary to mark any trees in this sale for product designation or any other purpose, the same color of paint will not be used as that used by SELLER.

Q. Undesignated live trees which are cut or otherwise injured by PURCHASER'S operations shall be paid for by PURCHASER at double stumpage, based on a stump cruise by SELLER; provided that such payment shall not release PURCHASER from liability for any damage occurring to SELLER, other than for value of said trees. The doubling of the appropriate product class price will be the correct double stumpage figure. The product class will be determined by the Florida Forest Service and its decision is final. The PURCHASER will be liable for all cost incurred by the SELLER to substantiate damages caused by the PURCHASER'S operations.

R. The amounts specified in the paragraph immediately preceding shall be regarded as liquidated damages and may be waived at the discretion of the Forester-In-Charge in accidental or exceptional cases which involve small amounts of material.

S. The Florida Forest Service reserves the right to assess a penalty for any designated merchantable timber sold on a per unit basis as described in Article IV, Paragraph B, and not moved from the sale area at the expiration or termination of this Agreement. The rates paid by PURCHASER will be ten dollars (\$10.00) per tree for pulpwood, twenty-five dollars (\$25.00) per tree for chip-n-saw, and fifty dollars (\$50.00) per tree for sawtimber.

T. The decision of SELLER shall be final in the interpretation of the regulations and provisions governing the sale, cutting, and removal of timber covered by this Agreement.

U. All operations on the sale area may be suspended by the Forester-In-Charge after written notice has been served on PURCHASER if the conditions and requirements contained in this Agreement are disregarded. Failure to comply with any of said conditions and requirements shall be sufficient cause for termination of this Agreement, the suspension and/or the cancellation of all agreements for other uses of State Forests or Lands.

V. This Agreement will not be assigned in whole or in part without the approval of SELLER.

W. The conditions of sale are completely set forth in this Agreement and none of its terms can be varied or modified, except by a fully executed amendment to this Agreement.

X. All monies deposited under this Agreement shall, upon failure of PURCHASER to fulfill all conditions and requirements herein set forth or made a part hereof, be retained by SELLER to be applied to the satisfaction of PURCHASER'S obligation hereunder.

Y. Title to all timber included in this Agreement shall remain with SELLER until it has been paid for.

Z. The right of ingress, egress and regress is hereby granted to PURCHASER for the duration of this Agreement.

AA. PURCHASER shall be responsible for seeing that the logging area, particularly around loading ramps, shall be free from any litter, such as oil cans, drums, paper and other refuse on a daily basis. If such refuse is not disposed of during the process of the logging operation, it will be the responsibility of said PURCHASER to see that the area is cleaned up upon completion of logging.

BB. PURCHASER agrees to assume full responsibility and to be liable for all damages to persons or property incurred in or resulting from the harvesting of timber; and PURCHASER agrees further, by acceptance of the award of this Agreement, to release, acquit, indemnify, save and hold harmless SELLER and the State of Florida, their officers, agents and representatives from any and all claims, loss, damage, injury and liability, whether for personal injury or otherwise, resulting from, arising out of, or in any way connected with the work to be performed under this Agreement.

CC. In signing this Agreement, PURCHASER attests satisfaction to the volume of timber advertised and upon which PURCHASER has bid, is present and available.

DD. PURCHASER shall notify SELLER at least two (2) working days prior to completion of the sale so that a compliance inspection can be made.

EE. The PURCHASER must adhere to and implement all applicable best management practices for silvicultural operations as outlined in the current Silviculture Best Management Practices Manual. In addition, no cutting will be allowed when logging conditions are determined by the Forester-In-Charge to be excessively wet or hazardous.

FF. The PURCHASER is solely responsible for maintaining the sale roads and making them serviceable prior to logging, as approved by the SELLER. Rutted roads will be back bladed by PURCHASER upon completion of sale and when requested by the Forester-In-Charge during the sale. SELLER retains the right to close down the timber sale operations in inclement weather if damage to roads is deemed by the Forester-In-Charge to be too severe.

GG. The PURCHASER may be required to harvest additional timber from the area prior to the completion of the sale. Any additional timber to be harvested will be designated by the Forester-In-Charge using a different color paint than was used to mark the original timber sale. Said timber will be paid for based on the selling price for this timber sale and the resulting price being paid for each product class as determined by the SELLER. Any additional timber to be harvested is subject to all conditions outlined in paragraph B.

HH. PURCHASER is to exercise care in not damaging trees that adjoin the sale area. Trees shall be felled within the sale boundaries and all logging activities shall take place within the marked sale boundaries.

II. PURCHASER agrees to have a representative to provide routine on site supervision of the harvesting operation that has completed the Florida Master Logger training program or has a comparable certificate of training that complies with the training recommended by the American Forest and Paper Association's Sustainable Forestry Initiative. This person will maintain such training certification as long as this Agreement is in effect. Additionally, this representative will schedule weekly onsite cutting inspection visits to the harvesting operation in conjunction with the Forester in Charge to assure compliance with Florida's Best Management Practices.

JJ. Any violations of this Agreement will subject PURCHASER to the possible termination of this Agreement, forfeiture of the Performance Bond and may prohibit the PURCHASER from bidding on future State Lands timber sales for up to five (5) years. Decision of the SELLER is final in this matter.

KK. All State Forest Haul Tickets assigned to this sale, used and unused, must be returned to the Forester-In-Charge at the end of the timber sale. Any tickets not returned may be deemed missing and will be assessed a penalty in the amount equal to the highest value load from the timber sale.

LL. Seller reserves the right to use remote telemetry at any time to ensure contract compliance.

MM. This Agreement is subject to the following additional conditions of sale:

Hiking trails located within the timber sale area will be closed during active logging. The hiking trails must be kept clear of logging slash at all times. Equipment can cross trails only where flagged. Loggers must not cut flagged trees along the hiking trails.

Warning signs to the effect of Trucks Entering Highway will be provided by the winning bidder or their contractors and posted in both directions where logging trucks will enter paved county and/or state roads.

The PURCHASER shall be responsible for seeing that all petroleum leaks and spills are properly contained, and all contaminated soil and materials are disposed of properly. Equipment with excessive leaks may be shut down by the Forester-In-Charge until repairs are made.

When ditches must be crossed to establish loading ramps the ditches can be layered with logs to facilitate the crossing. However, these logs must be removed from the ditch immediately after moving equipment from the ramp site and must be utilized by the purchaser. Any wood left in ditches for over 60 days after equipment is moved will be cleaned out by FFS and the PURCHASER will be charged a fee of \$500 per occurrence plus the penalty as specified in Article IV, section S.

Any piles generated on the loading ramp as a result of the logging operation must be scattered to the satisfaction of the Forester-in-Charge or their representative.

To minimize the possibility of transporting and spreading exotic plant species, harvesting equipment and skidders must be cleaned of all dirt and plant material prior to moving to a new harvest area, and again prior to departing the harvest area.

There is a bald eagle nest at the northern section of the Malabar Scrub Sanctuary (Unit one). There will be a 660-foot exclusion zone around the nest during nesting season which is October 1 - May 15, unless the young fledge before or after May 15. Harvesting equipment will only be allowed in the exclusion zone after nesting season is complete.

Due to Scrub Jay nesting season, the loggers may not engage in harvesting operations within the Malabar Scrub Sanctuary (Unit one) between the dates of March 1st to June 30th.

Gopher tortoise are a protected species and may occur throughout the sale area. Special care must be made not to disturb gopher tortoise burrows by equipment during logging. Burrows are to be avoided by observation of a 25 foot buffer zone by the loggers. It is the loggers' responsibility to ensure that no burrow or gopher tortoise is crushed or otherwise harmed during logging activities. Any individual gopher tortoise or any other wildlife (including all types of snakes) encountered during logging must not be killed, removed or otherwise intentionally harassed. Any gopher tortoise found injured should be reported immediately to the Forester-in-Charge or their representative.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 19th day of October, 2021.

Witnesses:

STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
NICOLE "NIKKI" FRIED, COMMISSIONER

Sarah A. South

Joey B. Hicks

Director, Division of Administration

Joseph Duncan

10/19/2021

Date

PURCHASER: Bodaca Timber Inc

Nancy Cauley

Nancy Cauley President  
Signature TTC

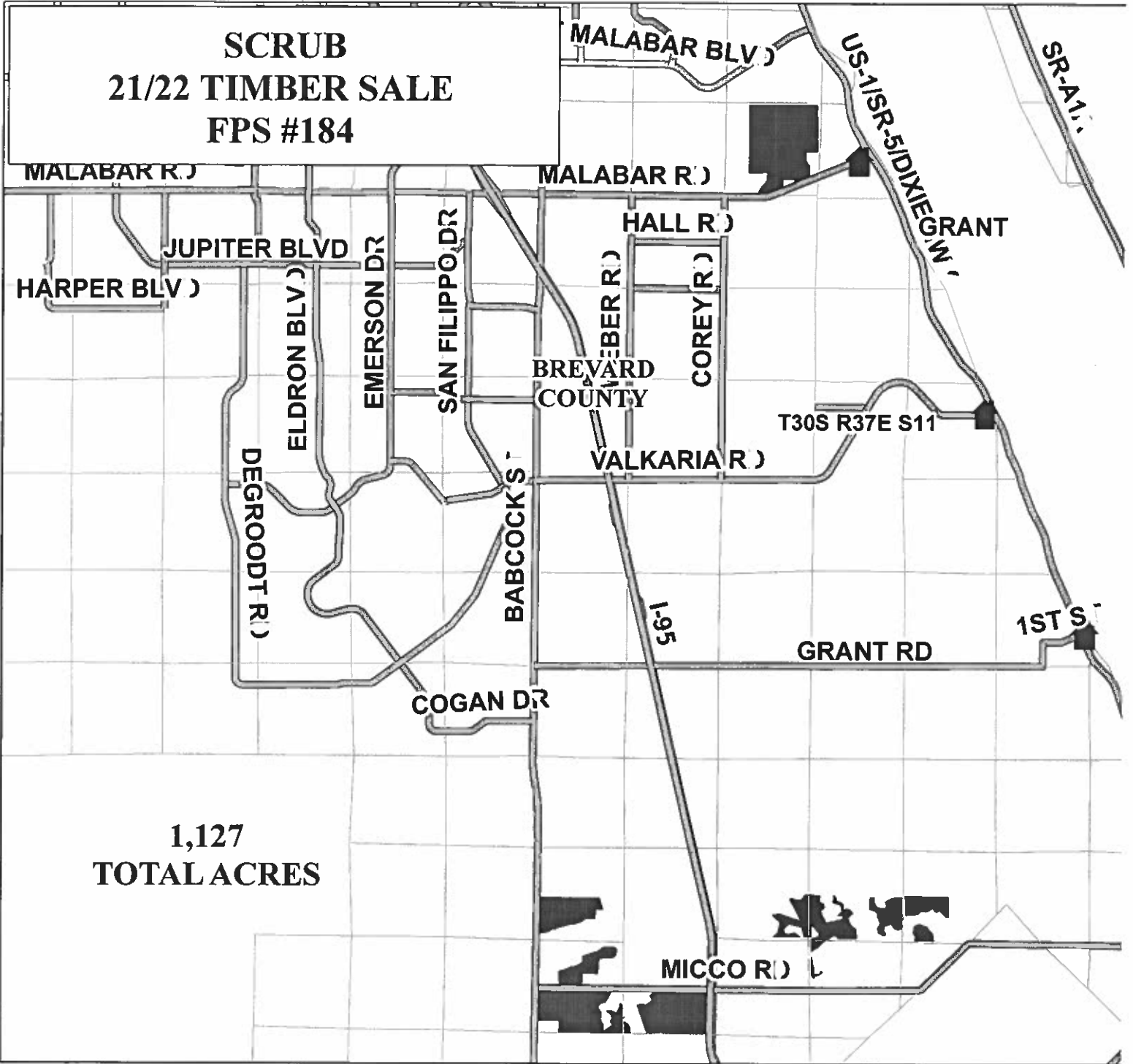
Ruth E. Bell

10-8-2021

Date



# SCRUB 21/22 TIMBER SALE FPS #184



1,127  
TOTAL ACRES

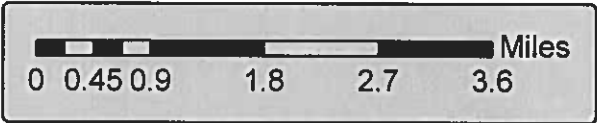
**OVERVIEW MAP**

SCRUB\_TS

S,T,R GRID

ROADS

SCRUB\_TS



Created by: Michael Edwards  
Senior Forester, OPL Reg.3 & 4  
June 4, 2021

**DISCLAIMER**

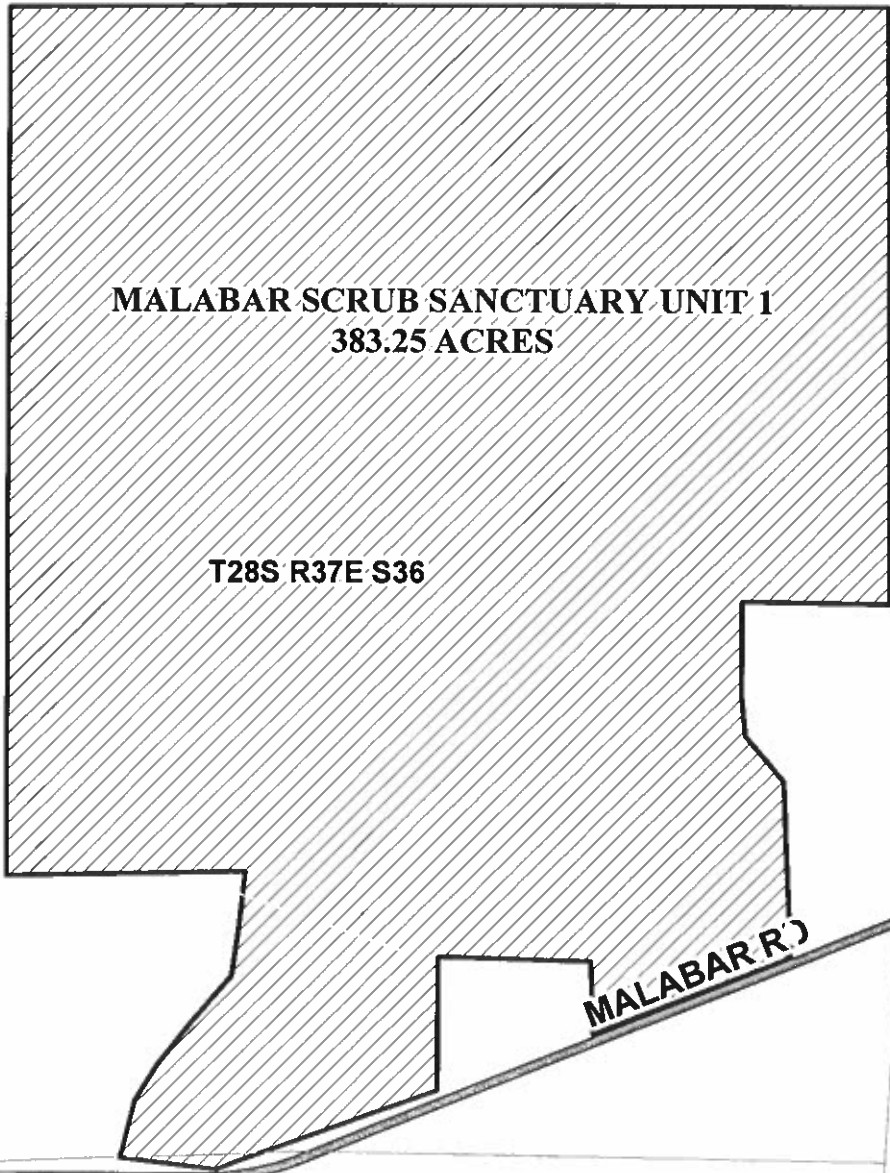
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**SCRUB  
21/22 TIMBER SALE  
FPS #184**

**E S25**

**BREVARD  
COUNTY**

**T28S R38E S30**



**T28S R37E S35**

**T28S R37E S36**

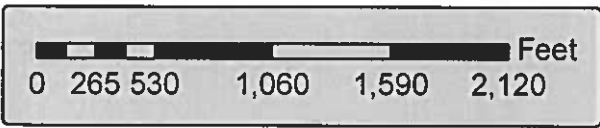
**MALABAR RD**

**T29S R37E S02**




**T29S R37E S01**

**T28S R38E S31**

**T29S R38E S06**



**TRACT MAP UNIT 1**

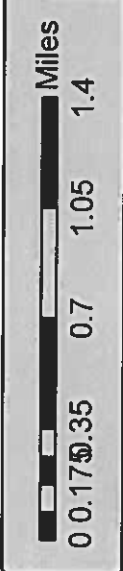
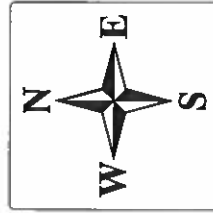
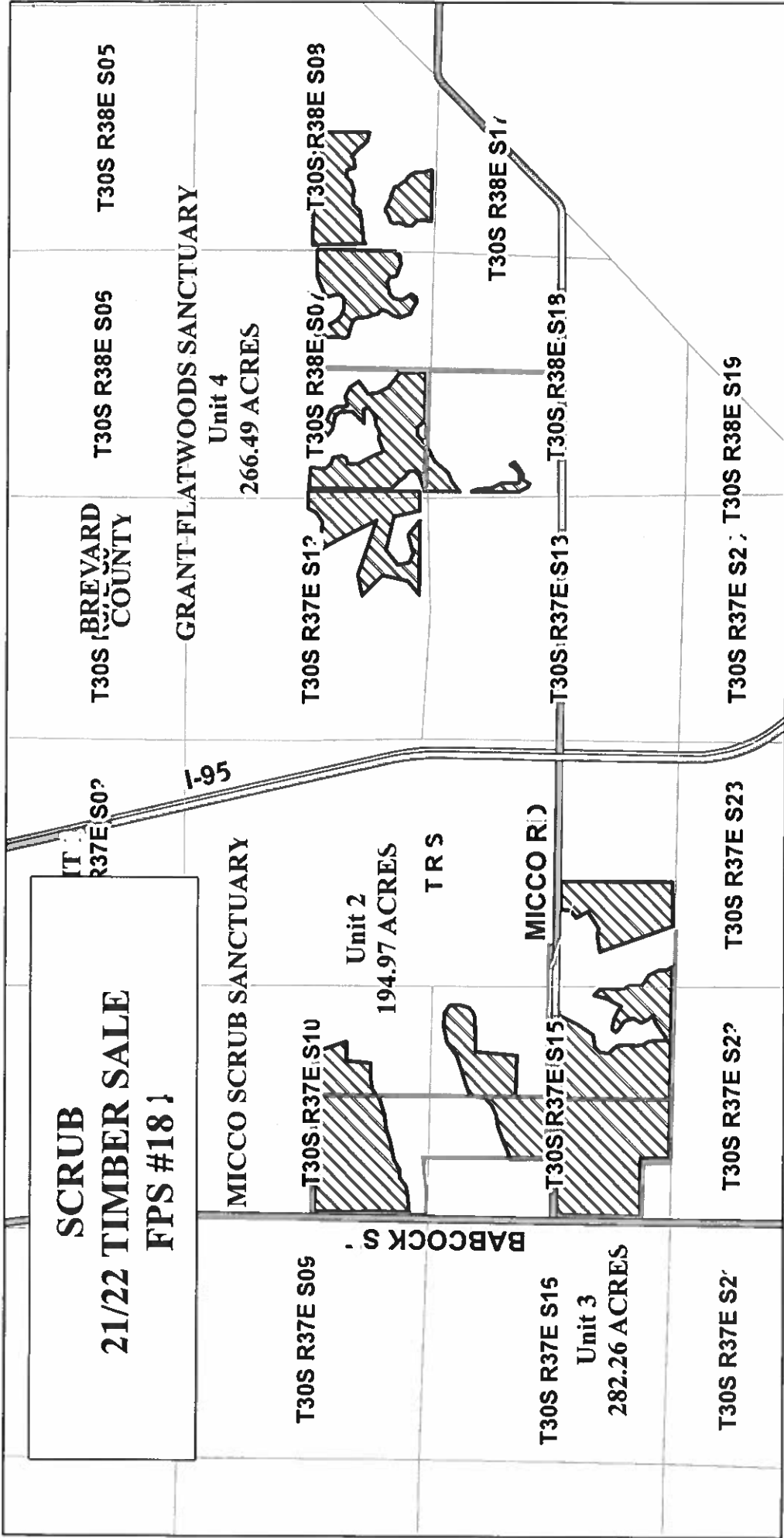
-  S,T,R GRID
-  ROADS
-  **TIMBER SALE UNIT 1**



Created by: Michael Edwards  
Senior Forester, OPL Reg.3 & 4  
June 4, 2021

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Created by: Michael Edwards  
Senior Forester, OPL Reg.3 & 4  
June 4, 2021



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**TRACT MAP UNITS 2, 3 & 4**

- S, T, R GRID
- ROADS
- 20 FOOT BOUNDARY CLEARCUT AREAS
- TIMBER SALE UNITS 2, 3, and 4

3.6.

## TOWN OF MALABAR

### MEMORANDUM

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**Date:** January 12, 2022 2022-DTC/T-1

**To:** Town Clerk & Town Manager

**CC:** Town Council and Mayor Reilly

**From:** Richard W. Kohler, Deputy Town Clerk/Treasurer

**Ref:** Trails & Greenways Committee Recommendations

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*During the January 10<sup>th</sup> Trails and Greenways Committee Meeting, the Committee discussed at length the Malabar Scrub Sanctuary Restoration Project. The two main topics of discussion were Mr. Murray Hann's "Malabar Scrub Compromise" presentation, and Mrs. Sue Hann's "Trails and Greenways Committee Proposal."*

*At the time of this meeting, the EELs program had several public meetings scheduled to listen to public input on this project. Committee Chair Thompson polled the members and received unanimous support from the Committee to endorse Mr. Hann's presentation, with the understanding that it would be presented at the 1/18/2022 EELs Public Forum. As this meeting has been canceled per direction of the Brevard County Commission, the presentation has been attached to this memo for your review.*

*After detailed discussion, a motion was made by Committee Member Bob Wilbur and seconded by Committee Member Daniel Waite for the Committee to "Recommend that Town Council investigate and pursue the recommendations and observations included in Mrs. Hann's Proposal." The motion passed with a unanimous 5-0 vote. Mrs. Hann's proposal has been attached for your review.*

*At the January 11<sup>th</sup> Brevard County Commission Meeting, the Commission voted unanimously to cancel the remainder of the public input meetings scheduled for this project, leaving a limited opportunity for public involvement. That motion has altered the applicability of Mrs. Hann's proposal, but as it was voted on, it should be heard for discussion.*

1365 Corey Road  
Malabar, Florida 32950

January 9, 2022

Town of Malabar  
2725 Malabar Road  
Malabar, Florida 32950

ATTN: Trails & Greenways Committee (via email)

January 9, 2022

Dear Mr. Thompson:

After reviewing the guiding documents for the EEL program, including the ballot language, the EEL Land Acquisition Manual (LAM), the EEL Sanctuary Management Manual (SMM), Florida Statutes 253.054 and the Population Viability Analysis (PVA), I believe there is an opportunity for the Town and Brevard County/EEL program to more clearly define and execute a process for improved collaboration going forward.

Ideally, the Town of Malabar could work with Brevard County to facilitate a solution set that is science-based and responsive to the Town's concerns as well as to the EEL program objectives (one of which remains passive recreation!).

I've drafted a conceptual process proposal (attached) for your consideration as a starting point for discussion at the Trails & Greenways Committee meeting on January 10.

As an almost 30 year resident of the Town, I am happy to work with the Committee, Town Staff and Council to develop solutions for our community.

Thank you for your consideration and leadership on this critical issue.

Sincerely,

*Susan Hann*

Susan Hann, P.E., AICP, ICMA-CM

cc: Honorable Mayor and Council Members  
Matt Stinnett, Town Manager  
Lisa Morrell, Special Projects Manager  
Debby Franklin, C.M.C., Town Clerk/Treasurer  
Richard Kohler, Deputy Town Clerk

Conceptual Process Proposal  
Malabar Scrub Sanctuary

Principles:

- Removing trees, especially oak trees, now is an irrecoverable action that has significant detrimental impacts to the Town of Malabar and its residents.
- The Population Viability Analysis (PVA)<sup>1</sup> is a predictive model. The data, analysis and conclusions seem reasonable; however, it should be emphasized that the PAV notes further modeling and monitoring are needed to validate recommendations. The PVA also predicts significant population decline decades in the future.
- Consequently, there is plenty of time to work collaboratively on finding management practices that can serve multiple objectives. There is no compelling reason for the EEL program to significantly reduce the number of trees on the property immediately.

Other Factors:

- There is no data and analysis that address what will be lost if the remaining trees are removed. A science-based approach should be more diverse, given the broader scope of the ballot language and EEL program guidance.
- The EEL referendum expires in 2024. The EEL program states it has insufficient resources for management now. Clearing valuable trees in the Town of Malabar to create scrub habitat that cannot be maintained is not in the public interest and especially not in the public interest of the Town's residents.
- The scope of work proposed by the EEL program is poorly defined. The EEL Program Manager said that the Land Manager "makes those decisions in the field" as to what trees stay and what trees are removed. It is impossible to have reasonable dialogue regarding the plan with such a loosely defined plan. Previous land clearing actions on the property have demonstrated this is a problem. A public records request for the construction contract submitted December 2, 2021 has not yet been answered. A better defined plan could improve the likelihood of common ground.
- The PVA is clear that removing trees in the Malabar Scrub Sanctuary will not arrest the decline of the Florida Scrub Jay in Brevard by itself. The PVA models indicate a more holistic approach is needed. The current EEL work plan does not address any of the other factors that are recommended by the PVA to reverse the expected decline in South Brevard.
- The ten-year update to the Malabar Scrub Sanctuary Management Plan, required by Florida Statutes is overdue.

Recommendation:

Stop work at the Malabar Scrub Sanctuary to allow time for an appropriate level of intergovernmental coordination and cooperation, given that the EEL properties comprise +/- 20% of the Town's land area. Potential ideas include:

- Encourage the Town of Malabar and the Brevard County Commission to consider entering into a Memorandum of Understanding or Interlocal Agreement that defines the roles and responsibilities of each entity regarding the Malabar Scrub Sanctuary. This could include permitting, stakeholder engagement, areas "protected" from tree clearing and other aspects of responsible stewardship imposed on both parties. This could also be an opportunity for the County and the Town to consider how the Cameron Preserve could be part of a long-term, comprehensive land management strategy that incorporates scrub habitat and passive recreation.
- The ten-year update of the Malabar Scrub Sanctuary Management Plan is overdue. This is an excellent opportunity for the Town and the County to collaborate on the next decade of sanctuary management.
- Develop more detailed GIS mapping of trees, trails, species and a plan to continue monitoring/mapping changes over time.
- Develop more detailed GIS mapping to show the Town and the public which trees will be removed, wetlands impacts, community buffer areas, etc. under any EEL land management proposal.
- The EEL program commits to appropriate supervision of contractors working at the Sanctuary to avoid unintended and irrecoverable tree removal as well as other detrimental impacts from poorly supervised land clearing.
- The EEL program should study and monitor the efficacy of the PVA models relative to properties already classified as "strong" and those that have been converted from "weak" to "strong" in the PVA model, before applying to Malabar Scrub Sanctuary.
- The EEL program should develop a viable plan to address all of the factors recommended in the PVA to reverse the expected decline in South Brevard, not just tree clearing in Malabar Scrub Sanctuary.
- The trees should not be cleared at least until the anticipated 2024 referendum passes and/or the Brevard County Commission has dedicated sufficient funding to maintain all identified habitat in perpetuity. Don't clear the trees without funding to maintain the habitat created by clearing the trees.
- Produce a science-based analysis of the other relevant factors that may offset the potentially marginal benefit of tree reduction. Such factors may include the benefits of urban forests and outdoor recreation. Economic impacts regarding property values and tourism should also be considered.

Below are relevant excerpts from the Population Viability Analysis (PVA)<sup>1</sup>:

- The probability of persistence of the Florida Scrub Jay on the South County Mainland area (which encompasses much more than the Malabar Scrub Sanctuary) remains at 100% for 60 years in the future if nothing is done to improve habitat or other mitigating measures. The probability of persistence does go to 0 (extinction) after about 160 years. Figure 76, Page 100.
- “PVA models project species population trends from detailed simulations of the mechanisms and drivers of demography, but generally rely on very simplistic characterizations of trends in habitat (such as documenting past rates of loss or gain of optimal habitat) rather than building on an understanding of the mechanisms and drivers of habitat change that would allow predictions of consequences of possible future land management action.” Page 148.
- “It will be important to continue monitoring the populations to determine if the projected declines do occur...If the population declines do not occur as projected, it will be important to determine what aspects of the population model are not characterizing the actual population dynamics.” Page 159.
- “More optimistically, the PVA modeling suggestions actions that might slow or even halt the declines (such as improving habitat quality and connectivity.) If such actions are taken, it will be important to monitor whether the expected benefits to the population occur over the projected time spans.” Page 159.
- The PVA states that “Models of habitat transitions in response to management regimes are being developed.” Page 160.

<sup>1</sup> Lacy, Robert C. and Breininger, David R. (2021) Population Viability Analysis (PVA) as a platform for predicting outcomes of management options for the Florida Scrub Jay in Brevard County 100-160,

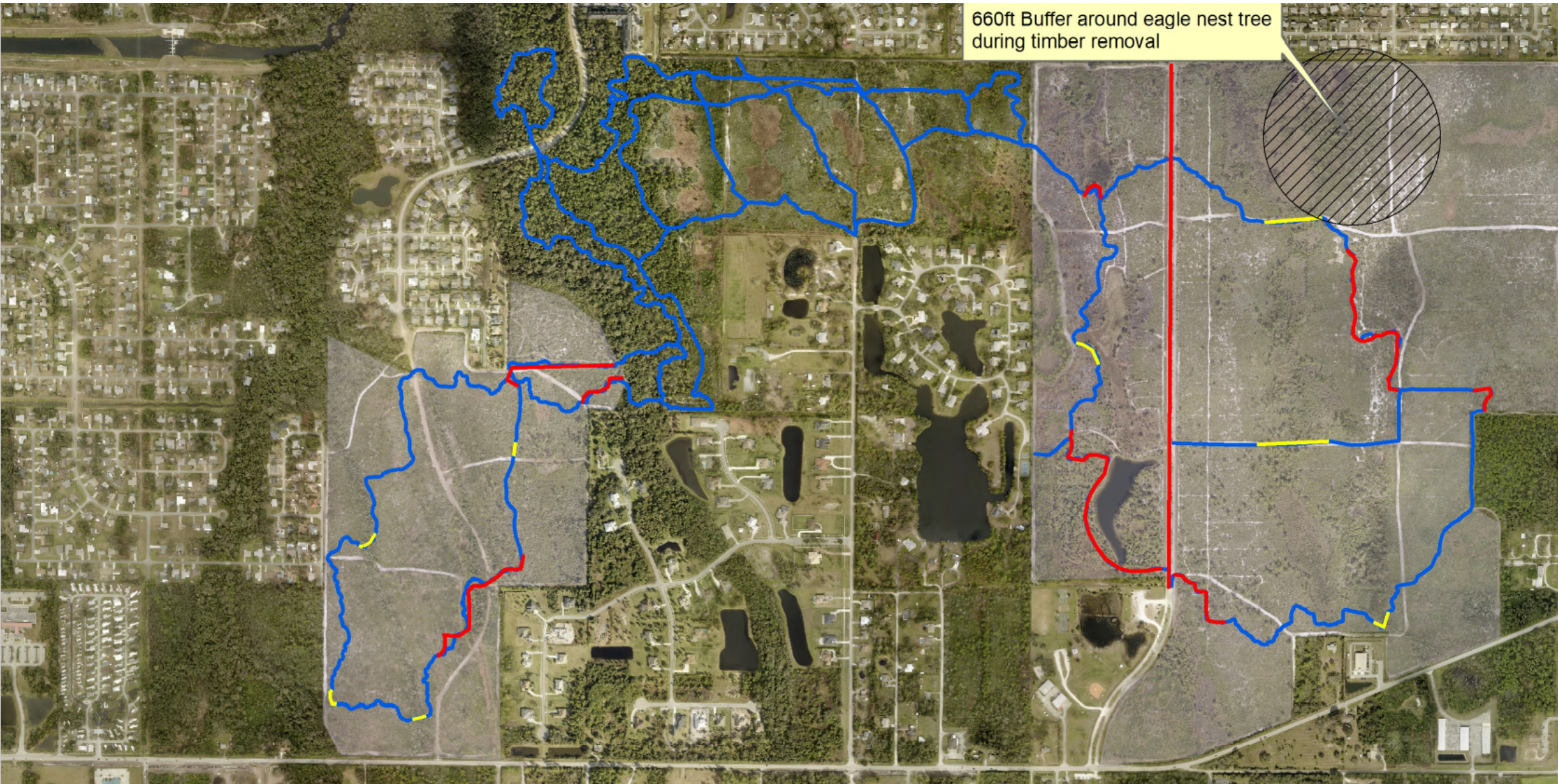


# ***Trail Compromise Undated Post EELp SMC 1/21/2022***

- **Town of Malabar Trails and Greenways Committee is proposing this compromise for restoration of Malabar East and West, with the goal of:**
  - **To the largest extent possible, allow the EELp to continue to manage the property for their overall environmental goals, and**
  - **Maintain the best trail user experience possible, and**
  - **Address immediately adjacent homeowner concerns where possible**
- **Compromise was modified after hearing concerns of SMC on 1/21/2022**



# ***EELs Restoration and Trail Map***



660ft Buffer around eagle nest tree during timber removal



## MAP LEGEND

Shaded area = Restoration project Boundary. Restoration will include pine tree thinning to achieve approximately 1 to 2 pine trees per acre; reducing cabbage palm density and reducing scrub vegetation height to less than 6ft.

**Blue line** = Existing trail

**Red line** = Areas along trail with a greater overstory where larger oak trees and cabbage palms will be removed and pine trees will be thinned to a greater spacing. Oaks and pine trees with flagging tape will remain standing.

**Yellow line** = Areas along trail with less overstory and tree removal will be minimal.

\*Portions of trails may be closed temporarily for safety reasons during the restoration project.

# ***Malabar West***

- The next two pages discuss Malabar West, and the distances to “screening trees”
- The EELp has identified a goal of maintaining 1000’ to any screens of trees, to help promote more optimal scrub habitat
  - Several sources quote 136M (450’), so this was also analyzed at 500’
- In most areas, screening trees occur already at the entire property boundaries, so an analysis was done by “projecting” the property boundaries toward the property interior to see the effect of these screening trees on potentially “optimal habitat” areas - see the effects of 1000’ and 500’ offsets



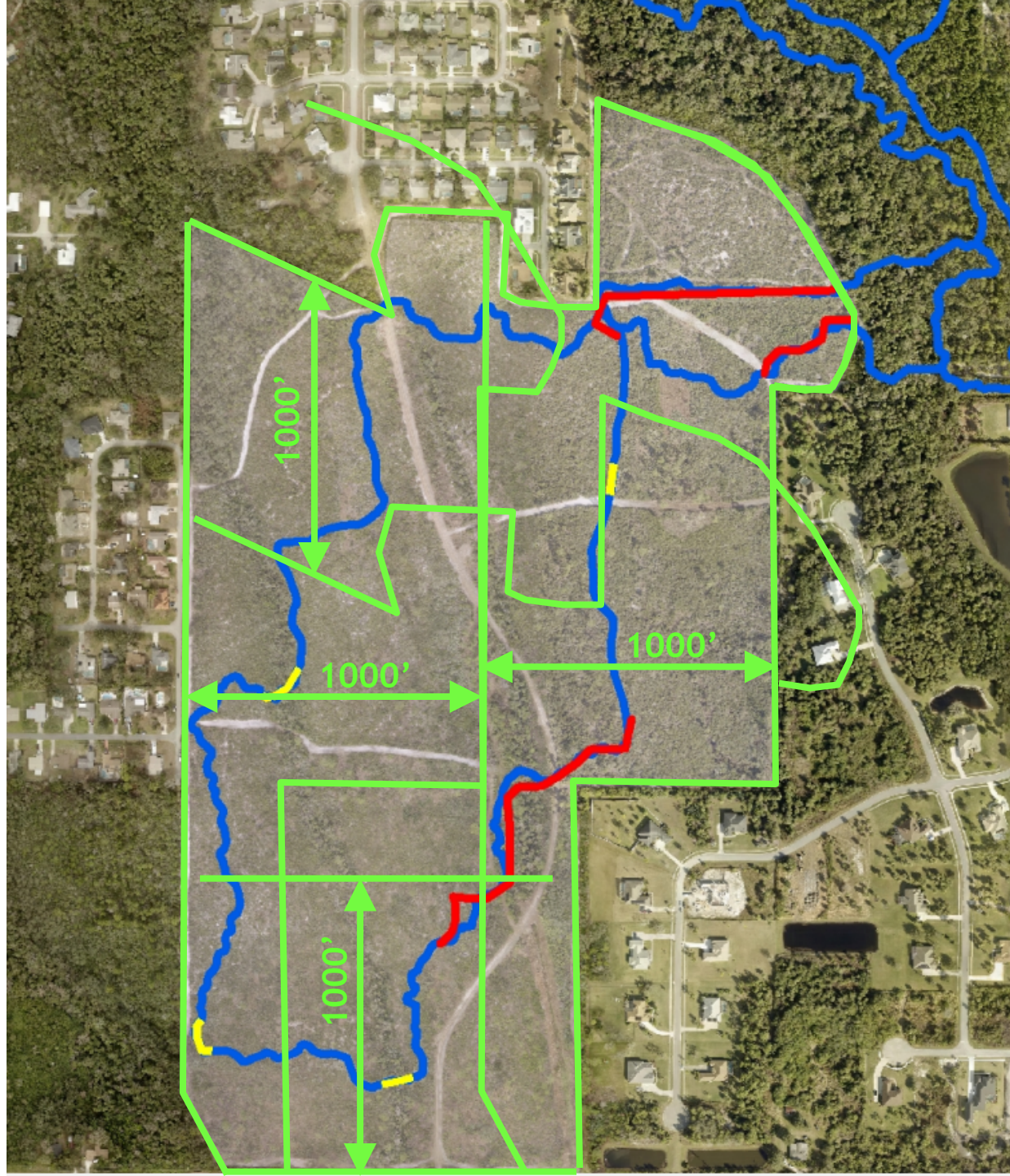
# Malabar West “1000 Feet to Screening Trees” Analysis

Green Arrow on Map  
Represents 1000' to  
property boundaries  
and/or tall trees



Projection of each property  
boundary by 1000' shows total  
overlap. This property has 0 area  
that meets the “optimal”  
Condition.

The 1000' distance to screening  
trees cannot be met at Malabar  
West





# Malabar West “500 Feet to Screening Trees” Analysis

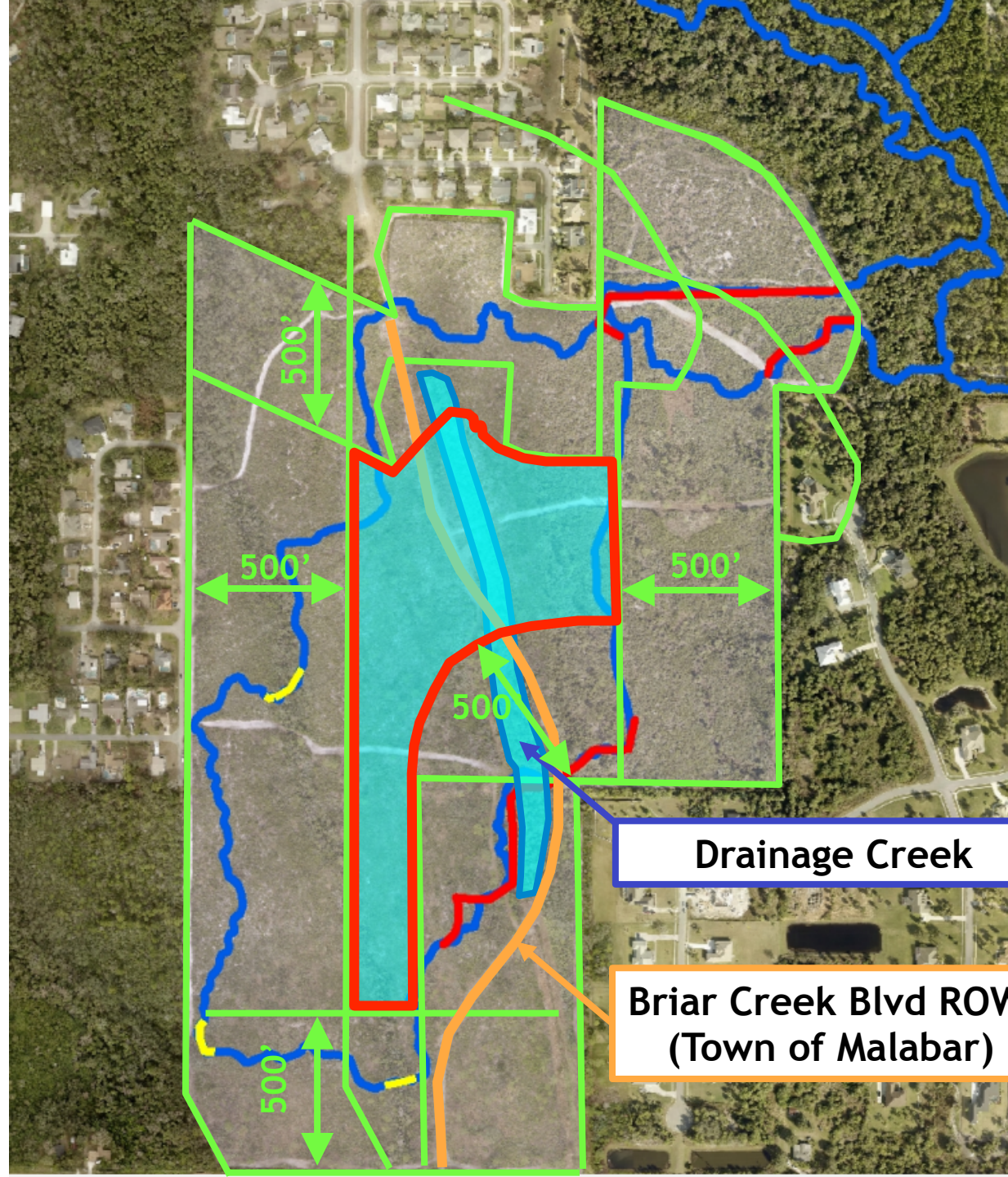
Green Arrow on Map  
Represents 500' to  
property boundaries  
and/or tall trees



Projection of each property  
boundary by 500' shows a small area  
in the property center that could be  
optimized

**NO trail important tree areas are  
inside this optimizable zone**

NOTE: Malabar ROW for Briar Creek  
Blvd (100' wide, property of Town of  
Malabar), and creek that feeds  
directly to the S fork of Turkey Creek



Drainage Creek

Briar Creek Blvd ROW  
(Town of Malabar)

# ***Conclusion of 1000' and 500' Analysis on Malabar West***

- **Malabar West is too small and complex in shape, and not appropriate to “optimize” the scrub based on the “screens of trees” criteria**
  - **1000' analysis: Zero property left**
  - **500' analysis: Small, complex area dominated by Malabar Owned ROW and Turkey Creek channel drainage creek.**
    - **Optimizable area is not a critical trail area**
  - **Note: Assuming the EEL program should seek specific permission from the Town of Malabar to modify Town of Malabar owned property.**
    - **The ROW is 100' wide and goes throughout the center of the property. Gates on both ends were built and are owned by Malabar. Most tall trees were removed from the ROW during the 2014 restoration.**
    - **Note: This ROW was damaged in the last restoration, requiring some repair from the TOM. Town owned ROW should be restored to the satisfaction of TOM**
  - **Note: The creek that runs through this property directly feeds Turkey Creek channel D and the Indian River Lagoon and is a critical drainage for the Town of Malabar.**
    - **The Town of Malabar maintains this drainage (example: replaced the drainage pipes that cross under Briar Creek blvd in 2015).**

# ***Malabar West***

- **Malabar West has an established trail compromise. We propose to build on that compromise while also recognizing that the EELp wishes to have overall fewer “screening” trees of greater than 15’. Within Malabar West, in general:**
  - **Maintain consideration of the “Trail Buffer” that is +/- 25’ of the trail (perform less severe mechanical reduction)**
  - **Within the Trail Buffer, remove all sand pines, remove taller pine trees as necessary, and remove scrub oaks greater than 12’ except for the areas specifically delineated, keeping all scrub oaks less than 12’.**
    - **Discussion: Everything we read indicates that trees of less than 15’ are OK. Elsewhere, EELp has roller chopped or mowed scrub oaks down to 4-6’. We do not see that this is necessary, but in particular we wish to see a different treatment near the trails.**
  - **Outside of the trail buffer, manage the property as you see fit, with the exceptions of:**
  - **Specifically delineated areas noted on the next pages**
  - **Some trail modifications are suggested, as a “win-win” scenario, with the goal of both advancing the EELp environmental goals, and enhancing the trial users experience.**
    - **There is some precedence for this. When the State of Florida Forestry did a major restoration on the Cross Florida Greenway, it started out with a “trail optimization” effort, to move trails away from prime scrub to areas where the land managers were more willing to leave more woods and taller overstory. References can be provided.**



# ***Malabar West***

- **Malabar West has an important drainage that directly feeds the S fork of Turkey Creek, and the IRL.**
- **The TOM expects to see SJRWMD rules for these waterways (25' buffer average) strictly maintained**
- **It should be recognized that this is a different habitat**
- **Overstory removal of the creek should be minimal and not impact the creek**
- **Tree removal at the lake edges with the Brontosaurus at Jordan Scrub was severe, and trees were pushed into the lake, and the edges were totally reduced with the grinder (see next page). This type of reduction is not acceptable along a turkey creek tributary**



# ***Edge of Lake in Jordan Scrub***





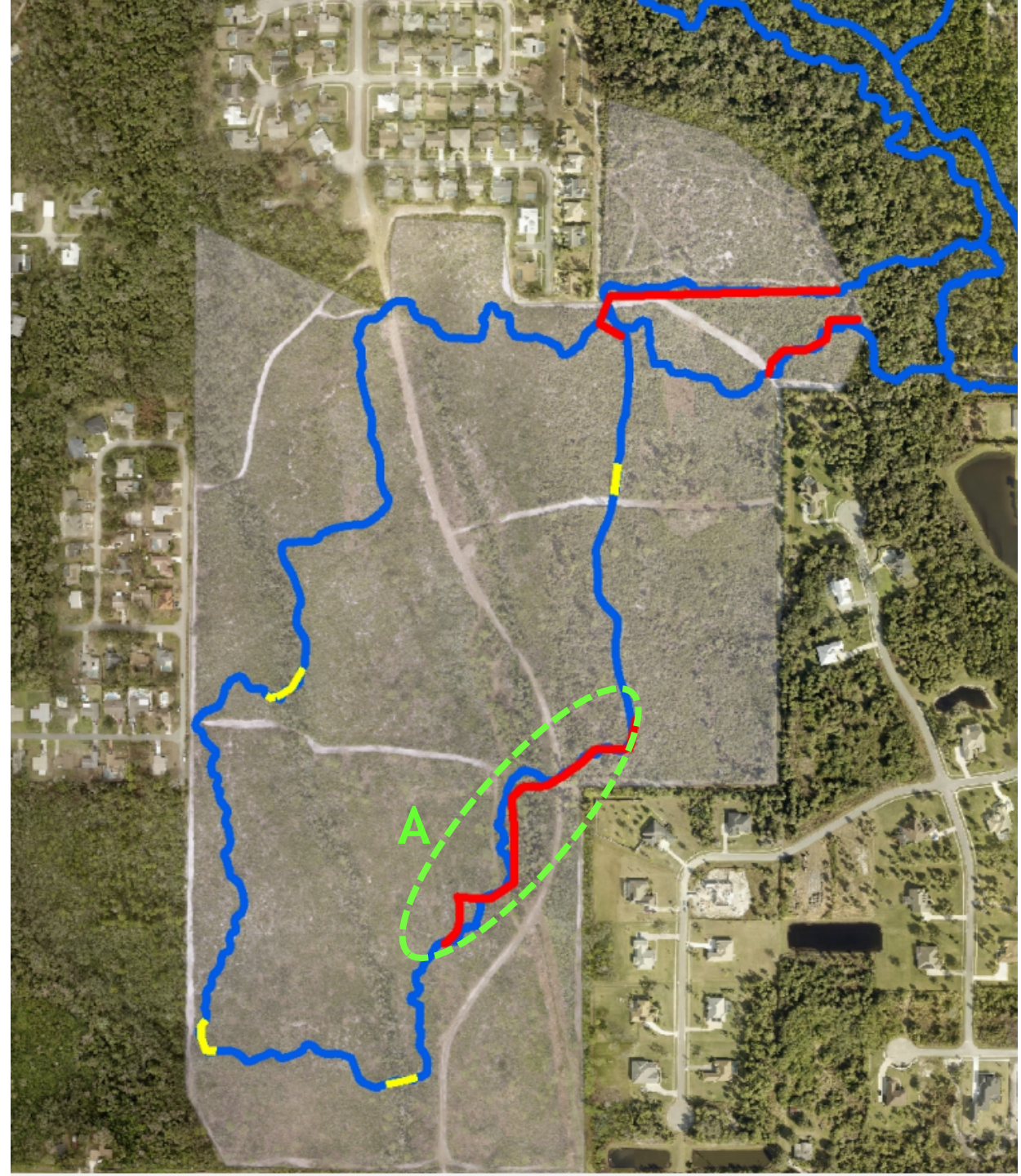
# Malabar West Overall

## Malabar West Area “A”

**Discussion:** This is one of the last areas left that is unmodified from the original trail buffer compromise.

**Compromise:** Request minimal tree overstory removal in this area, removal of sand pines or particularly tall pines, but no removal of scrub oak overstory, for the following reasons:

- 1) About half of this trail length shown is crossing a wetland and Turkey Creek channel D, and is a much different habitat. In general, we understood that a 25' buffer should be maintained to this creek.
- 2) It is tucked against Stillwater Preserve, which also provides a line of “screening trees”, and tree removal here does not really advance your management goals to get higher distance to screening trees.
- 3) Stillwater Preserve has expressed concerns with tree removal in this area
- 4) It provides trail users with a brief section that looks and feels like deep woods, after a long and largely exposed walk/ride South down the trail section above



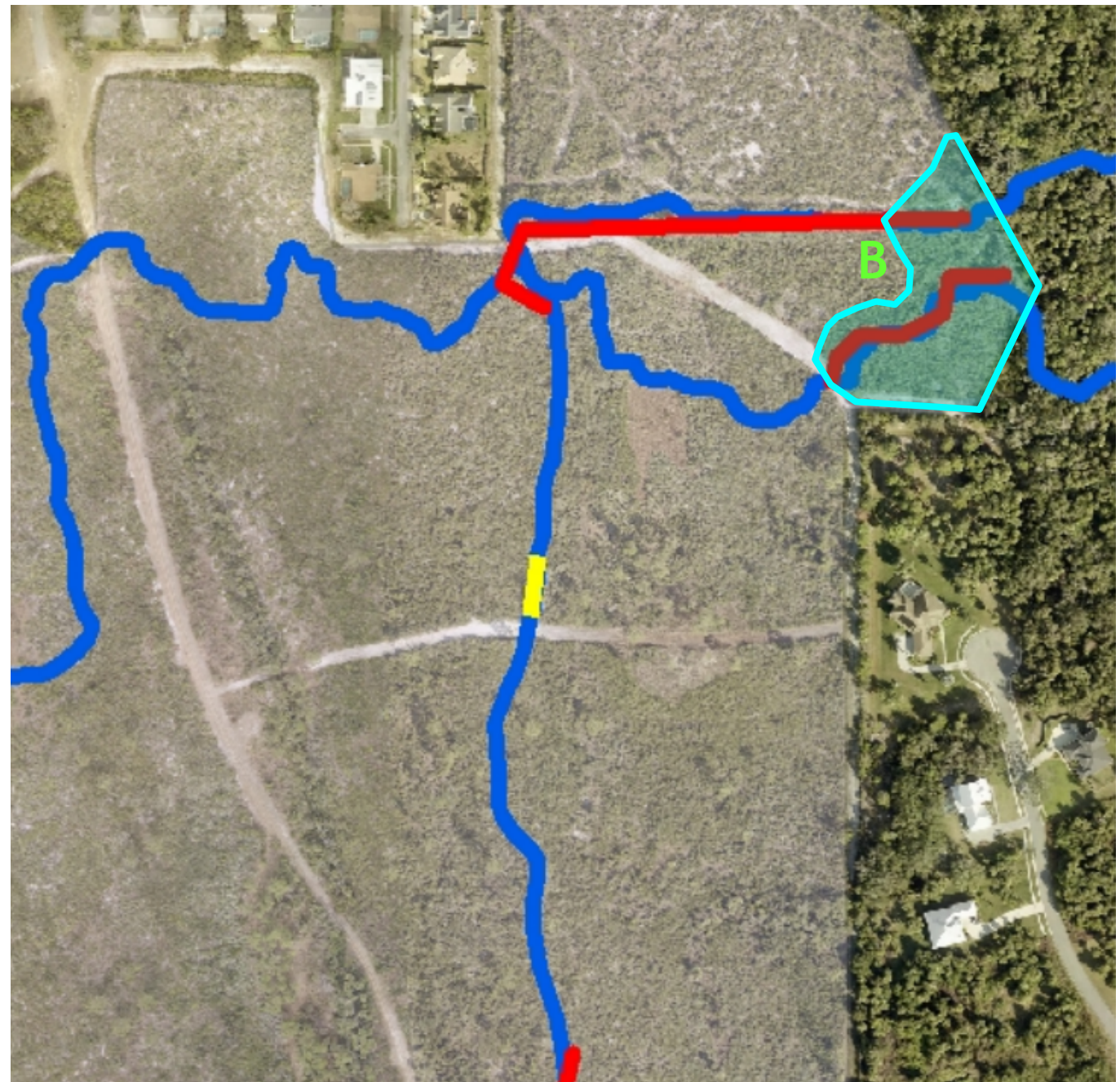


## Malabar West Area “B”

**Discussion:** This area habitat is transitioning to habitat of the Turkey Creek channel area. It is currently not very tall scrub anyway, and as a trail user you can feel this unique transition from scrub to deep woods habitat.

**Compromise:** Request minimal tree overstory removal in this area, for the following reasons:

- 1) This area is transitioning to the deep woods habitat, and transitions to live oaks and palms
- 2) This area is tucked into a small “pocket”, and does not significantly advance the environmental goals of the program to increase distance to screening trees (this “pocket” is about 100’ across).
- 3) This area is one of the better trail experiences, experiencing that transition to the deep woods.
- 4) Scrub oaks are not particularly tall in this area (15’ish feet)
- 5) Southern portion is a location where local photographers take “ideal Florida” pictures. This is a favorite trail section of most trail users.



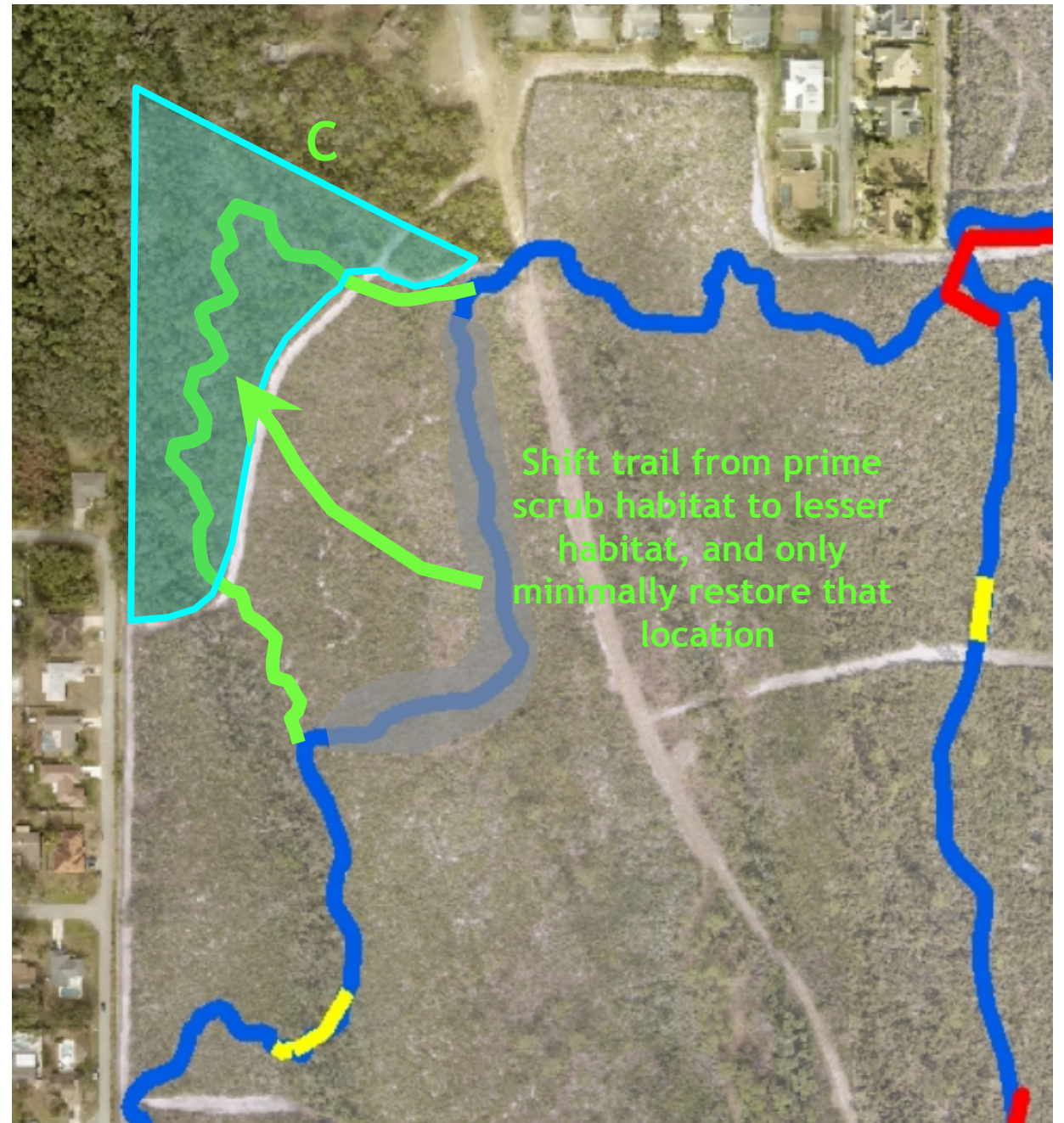


## Malabar West Area “C”

Discussion: Habitat in the C area is also transitioning to the Turkey Creek river bottom type area, and more importantly provides an important connector to the N-S wooded area that separates the City of Palm Bay from Brook Hollow subdivision. It provides an important game corridor for animals. It is transitioning to the creek habitat to the North. This area offers an excellent opportunity to relocate a trail that would benefit both trail users, and the EELp environmental goals, but moving a trail out of a more prime scrub habitat to a habitat that is not prime habitat, making the central area of prime scrub habitat larger.

Compromise: Request minimal tree overstory removal in area “C”, just removing sand pines as necessary, taper edge down to fire break, removal of tall pines on fire break, and some Fecon thinning:

- 1) This area is important connectivity to, and similar to, the property to the North
- 2) Provides an important game corridor looking at the overall map
- 3) This area is never going to be prime scrub habitat, and it would be better used by trail riders, shifting a trail from prime habitat to less prime habitat
- 4) End result of relocating the trail provides a larger prime scrub habitat and relocates the trail to a non-prime area that will also provide a better experience for the trail user. Win win.





## Malabar West Area “D”

**Discussion:** There are a few beautiful mature scrub oaks in this area that serve as a shade break and rest area from a largely shade-free run up from the South. It also serves as a small treed buffer against Brook Hollow (some of the only historic scrub oaks left that used to dominate this area).

**Compromise:** Request minimal tree overstory removal in area “D”, just removing sand pines, dead scrub oaks (from past burns) and excessively tall pines if needed:

- 1) Small buffer against Brook Hollow
- 2) Leaves some of the historic scrub oaks where Brook Hollow residents can see and enjoy them - Brook Hollow has an unofficial entrance nearby that is used by evening walkers everyday.
- 3) Provides trail riders a very short shade break at this trail intersection
- 4) Does not significantly affect the environmental goals of the program - it is a very small area located on the edge of the property – other tall screening trees are within 300’ to N and E





## Malabar West Area “E”

Discussion: E-W trail that moves uphill in this area is a mess. After the last restoration, there were many piles of trees in the area (~14). Some of those piles caught fire (a possible arson), and the fire fighting plows went down about half of this trail. The trail has never been an ideal trail, and historically there was another trail along the bank of Turkey Creek Channel D that went fallow after 2004 hurricanes. This is possibly a long-term goal, but there is a possible win-win scenario, by shifting the trail to deep woods habitat, and running back in along the edge near brook hollow fire break (already a non-ideal edge area), both trail users and the EELp environmental goals are advanced

Compromise: Request shift of trail shown to approximate location shown

- 1) This trail was historically there but dead ended and was not re-opened after the 2004 hurricanes
- 2) Possible win-win for both trail users and EELp environmental goals - allowing larger prime scrub habitat not interrupted by trails
- 3) Result provides a larger prime scrub habitat and better trail user experience





# Malabar East

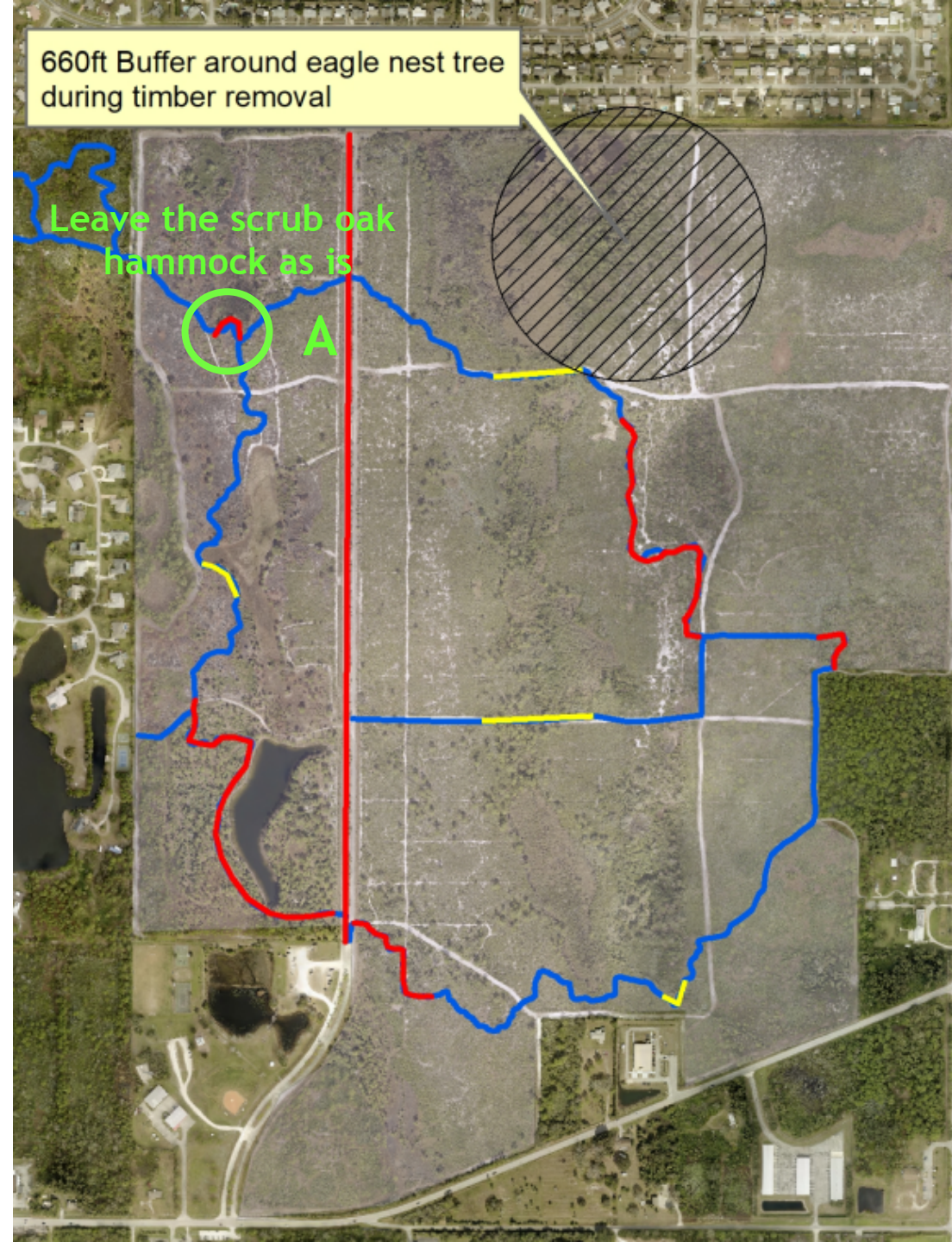
## Overall

### Malabar East Area “A”

**Discussion:** This small oak hammock was negotiated to be left, specifically for a small spot of “historic woods”, a hammock of scrub oaks, prior to a previous restoration (see next page for photo from 2001, nearby this location). It is small (possibly 100’ in diameter), and of little overall consequence to the EELp environmental goals, and we often see Scrub Jays in the understory of this area.

**Compromise:** Request minimal tree overstory removal in this area, just removal of sand pines and the taller pine trees, for the following reasons:

- 1) We often see Scrub Jays in this area. They seem to take refuge in the understory of the Scrub Oaks.
- 2) It is a small area. It has been suggested that a grouping of trees, if small enough, is no different than a single tree
- 3) It is near the property boundary to the N and W
- 4) It is all that remains of a much larger Scrub Oak forest - the trail was re-routed into this small oak hammock back in early 2000’s.
- 5) It provides trail users with a break of shade, after a long and largely exposed walk/ride throughout the rest of the sanctuary. It is a place to stop when overheating.





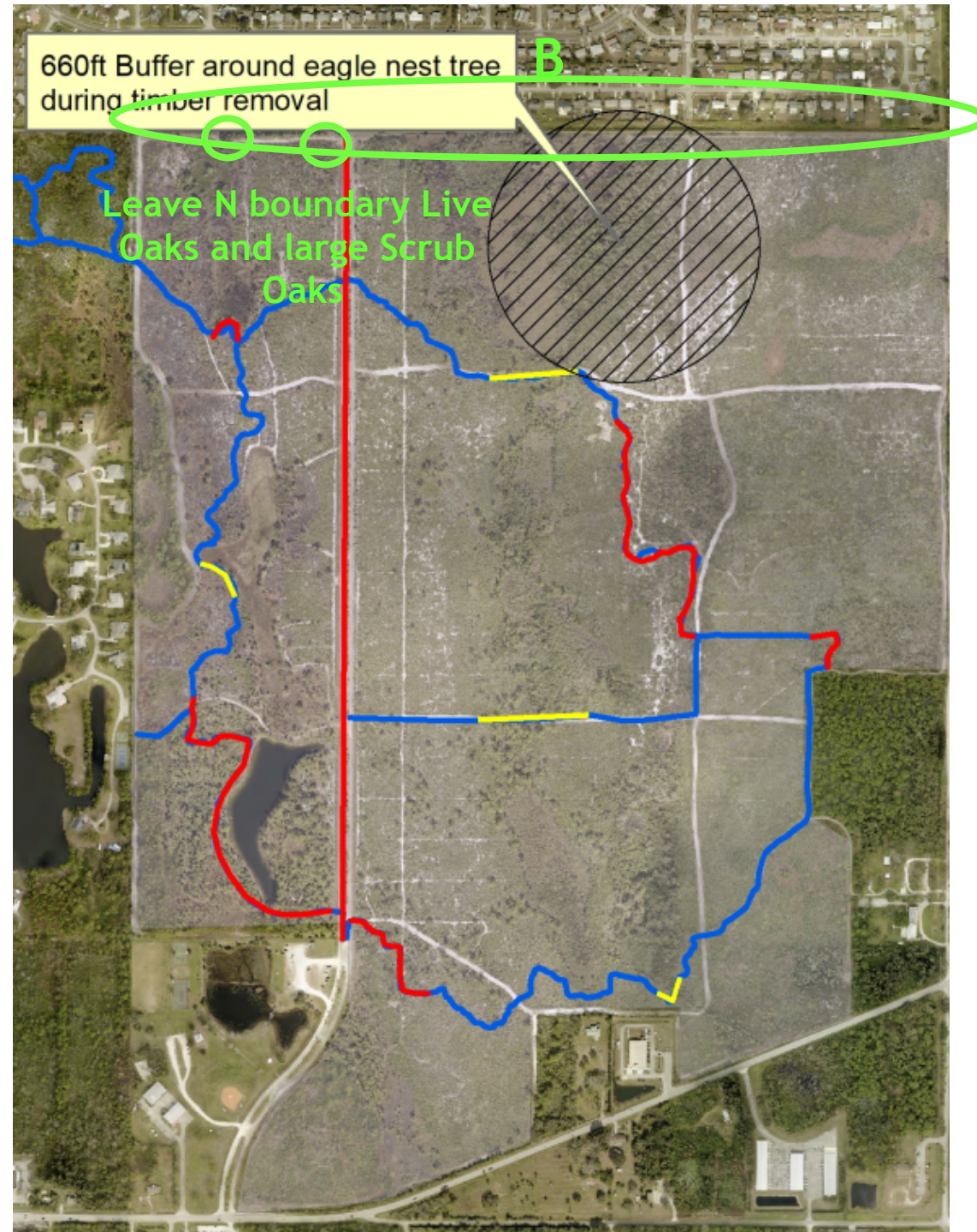
# Malabar East

## Malabar East Area “B”

Discussion: Live oaks on far north property edge. There are several very large, mature oak trees along the N boundary (most of them N of the current fire brake), most of these trees are already N of the fire break. These trees can be left with little affect on the program environmental goals - and provide a visual break with the large urban area to the North.

Compromise: Request oak trees on North boundary be left, for the following reasons:

- 1) North edge of property (back property power lines are 30' away to the N)
- 2) Provides a visual break between urban areas
- 3) Provides trees near the pave Al Tuttle trail just N of this boundary



# Malabar East

## Malabar East Area “C”

**Discussion:** The fire break along most of Country Cove, to the east, is inside the property boundary due to this area being dominated by 3 different depression marshes.

This wooded area provides a natural buffer between Country Cove and the rest of Malabar Scrub Sanctuary East. This should be left as-is with the exception of removal of sand pines, to prevent damage to the depression marsh areas, and to maintain the experience for Country Cove homeowners

**Compromise:** Request this area be left as-is

- 1) This is a narrow edge on the property boundary, and does not affect the environmental goals of the program
- 2) Area dominated by depression marshes and wetlands (this is why the EEL program chose to move their fire break away from the property boundary)
- 3) Provides a visual break for Country Cove homeowners





# Malabar East

## Malabar East Area “D”

Discussion: This is largely a palm and live oak hammock, that is probably left over from an old farm. It is a very wet area. It provides a good trail user experience. A small amount of this could be left against the Al Tuttle Trail (A Brevard County SCTPO Showcase Trail), and encompass part of the off-road trail, significantly enhancing the trail user experience with minimal affect on the EELp environmental goals - please see photo on next page.

Compromise: Request minimal tree overstory removal in this area, just removal of sand pines, for the following reasons:

- 1) Enhance both the Al Tuttle Trail and the off-road trails by leaving a small area of woods
- 2) This is on the very edge property of the property and will have minimal affect on the overall goals of the program - very tall trees exist immediately adjacent to this location just 15' away
- 3) Small area overall
- 4) Wet area that will never be prime scrub habitat





# Malabar East

## Malabar East Area “D”

**Discussion:** The Al Tuttle Trail is a Brevard County Showcase project

**There are very tall trees on private property, immediately adjacent to the trail to the S**

**Request the EELp leave ~25’ of trees next to trail to give the illusion of being in the woods, and improve the trail user experience.**

**Leave large oaks near trail in place**





# Malabar East

## Malabar East Area “E”

Discussion: This is a very large Scrub Oak hammock left as part of the original 2001 restoration compromise. It was specifically left not for trail users, but as a focal point of the main EEL sanctuary entrance, and also enhances the adjacent Malabar Park. Many, many people use this area.

Wedding pictures are taken here, bridal showers, pregnancy pictures, trail uses.

Compromise: Request no removal of Scrub Oaks in this area, just removal of sand pines, and possibly tall pine trees, for the following reasons:

- 1) This is the Sanctuary main entrance. This is the highlight of the sanctuary. Most trail walkers walk only ~100 yards, and this area gives them an enchanting experience
- 2) Used by many people besides trail users
- 3) Very Small area overall
- 4) Part of the original 2001 compromise
- 5) On the property boundary. Not a huge affect to environmental goals. This complex area already has screening trees within 400' to both the E and S.
- 6) Enhances the adjacent Malabar Park
- 7) Best area to view various woodpeckers
- 8) Scrub Jays often seen on the N part of this area, under the oak canopy
- 9) This is the signature area of Malabar East

