

ORDINANCE 06 -

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE XIII, DIVISION 2 AND 3 CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO LANDSCAPING, LAND CLEARING AND TREE PROTECTION SPECIFICALLY REPEALING DIVISIONS 2 AND 3; CREATING DIVISION 2 LANDSCAPING, LAND CLEARING AND TREE PROTECTION; RESERVING DIVISION 3; CREATING SECTION 62-4331 PURPOSE AND INTENT, SECTION 62-4332 DEFINITIONS, SECTION 62-4333 APPLICABILITY, SECTION 62-4334 EXEMPTIONS, SECTION 62-4335 NON-BONA FIDE AGRICULTURAL LAND CLEARING ACTIVITIES, SECTION 62-4336 PENALTIES AND REMEDIES, SECTION 62-4337 PERMIT APPLICATION REQUIREMENTS AND REVIEW PROCESS, SECTION 62-4338 LAND CLEARING PERFORMANCE STANDARDS, SECTION 62-4339 CANOPY AND TREE PRESERVATION PERFORMANCE STANDARDS, SECTION 62-4340 LANDSCAPING PERFORMANCE STANDARDS, SECTION 62-4341 LANDSCAPE BUFFERS, SECTION 62-4342 MAINTENANCE AND INSPECTIONS, SECTION 62-4343 INCENTIVES FOR INCREASED CANOPY AND TREE PRESERVATION AND INCREASED LANDSCAPING, SECTION 62-4344 ALTERNATIVE LANDSCAPE ENHANCEMENT PLANS, MITIGATION, COMPENSATION AND WAIVERS, SECTION 62-4345 APPEALS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, the Brevard County Code of Ordinances contains land development regulations relating to landscaping, land clearing and tree protection which are intended to protect and replenish trees and vegetation; prevent erosion; improve water quality and promote water conservation; buffer incompatible land uses; promote energy conservation; minimize negative impacts which can be created by large expanses of impervious surfaces; encourage preservation of native vegetation, reduce air pollution; reduce the premature and indiscriminate clearing of land; and enhance the aesthetic quality of life in Brevard County; and

WHEREAS, the Brevard County Board of County Commissioners desires to modify the existing land development regulations related to landscaping, land clearing and tree protection to enhance implementation of sections on agricultural exemptions, tree removal, betterment plans and canopy preservation; and

WHEREAS, on March 25, 2004, the Brevard County Board of County Commissioners directed staff to gather public comment and include it in the legislative intent; and

WHEREAS, after review of public comment, on February 22, 2005, the Brevard County Board of County Commissioners directed a landscape and land clearing taskforce be formed comprised of representatives from organizations representing a

wide variety of interests as well as citizen representatives from each Commission District to review the landscape and land clearing and tree protection codes; and

WHEREAS, that Taskforce reached consensus on major issues including agricultural exemptions, tree removal, betterment plans and canopy preservation and recommends the following revisions to the landscaping and land clearing and tree protection codes; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Article XIII, Divisions 2 Landscaping and 3 Land Clearing and Tree Protection, Code of Ordinances of Brevard County, Florida, are hereby repealed.

SECTION 2. Article XIII, Division 2 Land Clearing, Landscaping and Tree Protection is hereby created. Article XIII, Division 3 is hereby reserved.

SECTION 3. Sec. 62-4331. Purpose and Intent. is created as follows:

Section 62-3631-62-4331. Purpose and Intent.

The Brevard County Board of County Commissioners finds that the health, safety and welfare of its citizens can best be protected by land use regulations that support and enforce the following community goals:

- (1) Promote the establishment, management and conservation of native vegetative communities.
- (2) Promote visual and aesthetic buffers between land uses.
- (3) Encourage the protection of Heritage or Specimen Trees.
- (4) Promote water conservation and aquifer recharge.
- (5) Encourage creative landscape designs.
- (6) Protect life and property by appropriately planting trees and vegetation.
- (7) Preserve property values.
- (8) Control soil erosion and mitigate heat, air and water pollution.
- (9) Provide regulations that are user-friendly, flexible and minimize conflicts with other land development regulations while protecting property rights.

SECTION 4. Sec. 62-4332. Definitions. is created as follows:

Section 62-3632-62-4332. Definitions.

Active Development Order means an action by the County approving a site development plan, final development plan or subdivision plat, or the issuance of a permit pursuant to Chapter 22, Brevard County Code, ~~or the approval of a conditional use permit for a borrow pit, commercial borrow pit or private lake.~~

Adverse Site Conditions means existing site conditions that adversely affect the implementation of the provisions of this Article~~Division~~ and that hinder plant viability and growth. Examples include, but are not limited to:

- (1) Existing topographic elevation changes that would result in the likelihood that preserved ~~and~~/or planted materials would not survive.
- (2) Existing areas of buried solid waste at a depth that would affect viability of preserved ~~and~~/or planted materials.

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- (3) Existing electrical lines or utility easements that prevent or restrict the preservation and/or planting of landscape materials.
- (4) BeachsideBarrier island planting conditions that cannot support certain hardwood species.
- (5) Existing, expansive water bodies or preserved natural areas where their location might prohibit the installation of required landscaping or buffers or that conflict with preservation.
- (6) Redevelopment sites where existing landscaping does not meet current standards and where existing site conditions, such as but not limited to, impervious surfaces, access locations, or building locations, prevent the site from meeting the current landscaping requirements.
- (7) Sites where type or distribution of existing canopy or other Protected Trees are such that preservation requirements would prohibit site development or conflict with required development standards, such as stormwater or roadway designs, ~~and where alternative site plan designs do not result in meeting the specific landscaping/tree protection requirements as outlined elsewhere in the code.~~

Adverse Site Conditions do not include plan designs that do not avoid preservation areas or trees to the Greatest Extent Feasible.

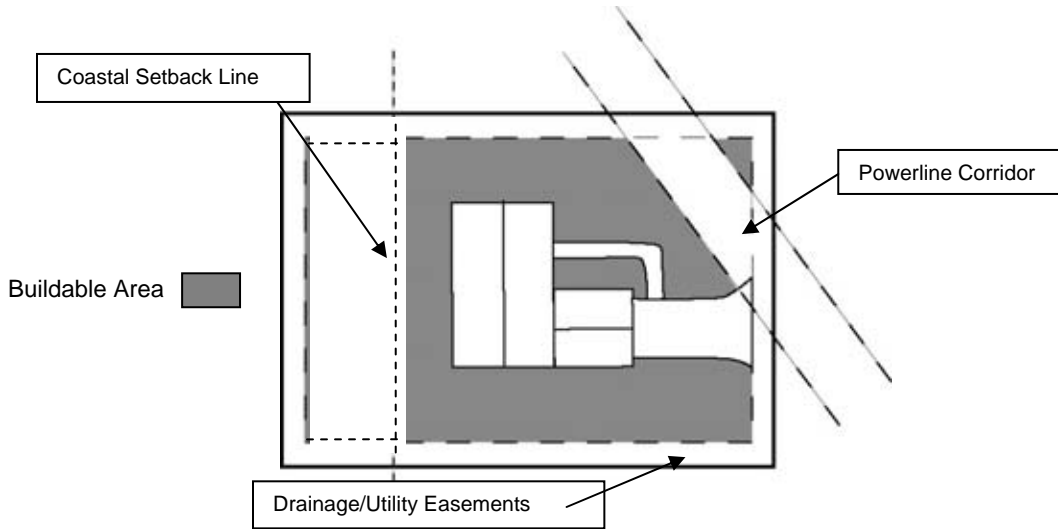
After-The-Fact Permit means a permit issued after a violation has occurred for the primary purpose of correcting the violation (if the activity would have been permissible) or for bringing the violator into compliance with existing regulations.

Agricultural Activity means any use or action commonly associated with the raising of crops, livestock, silviculture, forestry, groves, pasture, nurseries, or combinations of such activities.

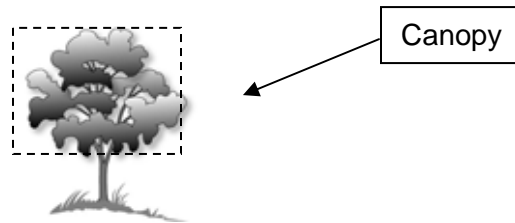
Alternate Landscape Enhancement Plan means a plan that provides property owners with adverse conditions the flexibility to design a landscape plan to manage the specific, Adverse Site Conditions.

Bona Fide Agricultural Use means the commercial agricultural use of a site, parcel, or lot that has been classified as "Green Belt" pursuant to Section 193.461, Florida Statute.

Buildable Area means the gross area of a site, parcel or lot excluding any area of a site, parcel or lot which is not eligible for the issuance of a building permit by the County, except such as building setback areas, shoreline protection buffers, coastal construction setback areas, wetlands and other similar areas required pursuant to the applicable provisions of Articles II, VI, X, XII and XIII of this Chapter. If any of the excluded areas will be credited towards the required landscaping, then the area(s) is considered Buildable Area for the purposes of landscaping and preservation requirements calculation. Areas that may be potentially cleared in the future cannot be credited towards landscaping and preservation and plantings are discouraged in these areas.

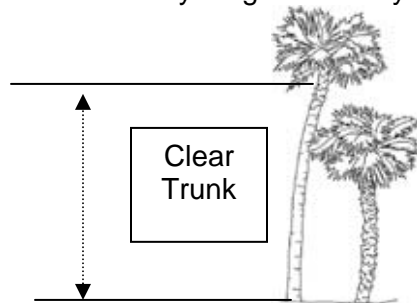


Canopy means the area consisting of a tree's branches in all directions from its trunk, the outer edge of which is the Dripline.



Canopy Coverage means the aerial extent of ground within the drip line of the tree.

Clear Trunk means a measurement from the soil line to the point in the canopy where the trunk caliper begins to taper abruptly. On many palms, this point will lie at the base of the petiole of the third or fourth youngest but fully expanded leaf.



Diameter at Breast Height (dbh) means the diameter of the trunk of a tree, or the sum of the stems of a multi-stemmed tree, measured 4.5 feet above natural or development grade.

Dripline means an imaginary vertical plumb line that extends downward from the tips of the outermost tree branches and intersects the ground.



Florida Friendly Landscaping means the utilization of nine principles in landscape design. These nine principles are: 1) Right Plant, Right Place; 2) Drought Tolerant Plantings; 3) Fertilize Appropriately; 4) Mulch; 5) Attract Wildlife; 6) Control Yard Pests Responsibly; 7) Recycle; 8) Reduce Stormwater Runoff; and 9) Protect the Waterfront.

Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprints ~~and/or~~ reducing Vehicular Use Areas, parking areas.

Heat Island Effect means the increase in temperature in urban areas compared to the surrounding rural lands usually because of reduced vegetative cover or excessive use of impervious surfaces.

Heritage Tree means any tree that is listed in the American Forest Association's Big Tree list or any tree that is listed in the Florida Big Trees List as determined by the Florida Dept. of Forestry or that would measure eighty percent (80%) of the points of a tree on the Florida Big Trees List.

Hydrozone means the grouping of plant species with similar watering needs in landscaped areas having appropriate microclimate, soil, and water conditions so that all plants in that area thrive.

Improper Pruning means the following:

- (1) Pruning that reduces the height or Spread of a tree that has not attained maturity, by altering the dominant stem(s) within the tree crown to such a degree as to remove the natural canopy of the tree; or
- (2) Pruning that leaves stubs or results in a flush cut (a cut too close to the main branch or trunk that does not allow for proper healing); or splitting of limb ends; or
- (3) Peeling or stripping of bark; or the removal of bark to the extent that, if a line is drawn at any height around the circumference of the tree, over one-third (1/3) of the length of the line falls on portions of the tree where bark no longer remains; or
- (4) Using climbing spikes and hooks, except for purposes of total tree removal or as specifically permitted by the Florida Urban Forestry Council or American National Standards Institute (ANSI A-300); or
- (5) Destroying the natural habit of growth which causes irreparable damage and permanent disfigurement to a tree such that, even with re-growth, the tree will never regain the original characteristics of its tree species, or is a danger to the public or property; or
- (6) Pruning that results in flat-cutting the top or sides of a tree, to sever the leader or leaders or to prune a tree by stubbing off mature wood, except where removal of a branch is necessary to protect public safety.
- (7) Exception: The removal of diseased or dead portions of a tree, or the removal of an interfering, obstructing or weak branch shall not constitute improper tree

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pruning under this section. Interference with or obstruction of streetlights, stop signs or traffic signals is an example of pruning which, if accomplished by the International Society of Arboriculture's pruning standards, American National Standards Institute (ANSI A-300), the Florida Urban Forestry Council, or the University of Florida Cooperative Extension Service's circular publication No. 853 entitled *Pruning Landscape Trees and Shrubs*, is not a violation of this **Article Division**.

- (8) All Non-Native Noxious Invasive Plants as defined in this section are exempt from improper tree pruning standards.

Land Clearing means the removal or cutting down of vegetation from any site, parcel or lot including root-raking, improper tree pruning or any other activity that affects the survivability of a Protected Tree.; ~~provided, however, that it does not include except~~ mowing, trimming or pruning so as to maintain vegetation in a healthy, viable condition.

Landscaped Earth Berm means an earthen mound which is not greater than four feet in height and which is sodded and planted with additional vegetation to meet the specifications of the required vegetative buffer classification.

Landscape Plan means a plan drawn to an appropriate engineering scale depicting existing and proposed vegetation and prepared by a Recognized Knowledgeable Person.

Landscaping means the preservation or planting of vegetation to enhance the natural or built environment pursuant to the provisions of this **articleDivision**.

Mangrove means any specimen of the species *Avicennia germinans* (Black Mangrove), *Laguncularia racemosa* (White Mangrove) or *Rhizophora mangle* (Red Mangrove).

Mature means the plant has reached eighty percent (80%) of the expected ultimate size.

Native Species means those species indigenous to Brevard County as determined by the best available scientific and historical documentation. *The Atlas of Florida Native Plants* maintained by the Institute for Systemic Botany, University of South Florida shall be used as a reference.

<http://www.plantatlas.usf.edu>.

NRMO means the Brevard County Natural Resources Management Office or its successor agency.

Non-Native Noxious Invasive Plant, for the purposes of this ordinance, means the following: All plant species listed in Appendix A (i.e., the Florida Department of Agriculture and Consumer Services rule 5B57.007, Florida Administrative Code, as may be amended and the Florida Department of Environmental Protection Prohibited Aquatic Plants List, FAC 62C-52, as may be amended).

Pervious Area means an area that permits water and air to permeate or penetrate to the roots of existing or planted vegetation. Pervious Areas do not include materials such as compacted marl or clay, pavement, concrete, or pavers.

Protected Tree means, with the exception of Non-Native Noxious Invasive Plants, a hardwood tree having dbh of ten (10) inches or greater located on the mainland or Merritt Island or having a dbh of one and a half (1.5) inches on the barrier island; or a softwood tree, such as a pine, having a dbh of 14 inches or greater or one and a half (1.5) inches on the barrier island; or scrub oaks (*Quercus myrtifolia*, *Q. chapmanii*, *Q. inopina*, *Q. virginiana* var. *maritima*) on the mainland, Merritt Island or barrier island having a dbh of one and a half (1.5) inches.

Recognized Knowledgeable Person means an individual **recognized by the County as being** knowledgeable in the identification and evaluation of vegetative resources, such as a forester, biologist, ecologist, horticulturist, Florida registered landscape architect,

licensed landscape contractor, certified ISA arborist, certified nurseryman or person having similar recognized skills and experience.

Re-growth Control means removal or trimming of individual plants before the plants reach the onset of flowering.

Roll Back provisions (as specified in Section 62-4335) apply only to land clearing activities on lands that are not ~~currently~~ classified as Green Belt as of the effective date of Division or that are engaged in agricultural pursuits not classified as bona fide as defined in Section 193.461, Florida Statute. For these properties, no new development order or rezoning request may be submitted which would enjoy the current cleared state for a minimum of three years from the date of Agricultural Exemption approval.

Specifically, if a new development order or rezoning request is submitted within three years of the date of the approval, the submittal shall reflect the pre-cleared conditions of the site and apply the current ordinance to the pre-cleared conditions.

Root Protection Zone means the area beneath a tree centered on the trunk with a radius equal to five times the projected mature trunk's dbh.

Soil Amendment means a replacement ~~and~~/or improvement to the soil providing for optimum root and plant growth of vegetative materials.

Specimen Tree means a tree or group of trees considered an important community asset due to its unique or noteworthy characteristics or values. A tree or a group of trees may be considered a Specimen Tree based on its size, age, rarity or special historical or ecological significance. Examples include large hardwoods (oaks, maples, etc.) or softwoods (pines, cypress, cedars, etc.) in good condition as determined by a Recognized Knowledgeable Person, with a dbh of 24 inches or greater and smaller understory trees (stoppers, hollies, etc.) in good or better condition with a dbh of ten inches or greater.

Spread means the crown diameter measured by taking the average of the widest branch Spread and the branch Spread perpendicular to it.

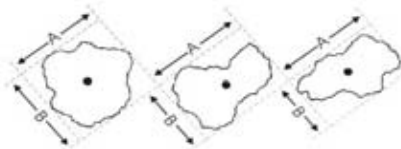


Fig. 1 Add A and B together and divide by 2 to get the Spread.

Tree is a perennial, woody plant that is generally characterized by having a self-supporting trunk with secondary branches. Trees shall be classified as follows:

- (1) Large trees: Average mature height of a minimum of 40 feet.
- (2) Medium trees: Average mature height of a minimum of 25 feet to less than 40 feet.
- (3) Small trees: Average mature height of a minimum of ten feet to less than 25 feet.

Tree Removal includes any act that physically removes the tree or its root system from the earth or causes a tree to die, changing the natural grade above or below the root system or around the trunk or improper pruning where the natural form of the tree is permanently changed ~~and/or~~ and results in tree death or decline.

Understory means an underlying layer of low native vegetation usually associated with trees.

Vegetative Buffer Area means an area of undisturbed native vegetation or vegetation established consistent with the surrounding vegetation and soil types. This area shall be located along the perimeter of properties where required by the County.

Vegetation means any plant material, including but not limited to trees, shrubs, vines, herbs and grasses. Vegetation shall be classified as follows:

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- (1) Large trees: Average mature height of a minimum of 40 feet.
- (2) Medium trees: Average mature height of a minimum of 25 feet to less than 40 feet.
- (3) Small trees: Average mature height of a minimum of ten feet to less than 25 feet.
- (4) Shrubs, ground cover and vines: Average mature height of less than ten feet, which completely covers the ground at maturity.
- (5) Palm trees: All heights.

Vegetative Communities means a natural association of vegetative plants, including but not limited to both trees and understory.

Vehicular Use Area means any area used for the purpose of driving, maneuvering, parking, storing, loading or unloading or displaying of motor vehicles and boats, excluding rivers, lagoons, streams, public rights-of-way, and permitted driveways and parking areas for single-family residences. Motor vehicles shall include, but are not limited to, automobiles, trucks, vans, campers and motorcycles.

Viable means plant material exhibiting a healthy and vigorous condition having live foliage out to the tips of all branches and stems. Palms shall have no dead spots or yellowing.

Xeriscaping[™] or Water-Wise Landscaping means the utilization of seven principles to conserve water in the landscape. These seven principles are 1) plan and design 2) soil analysis and amendment 3) appropriate plant selection 4) reduction of turf areas 5) efficient irrigation 6) mulching, and 7) proper maintenance.

SECTION 5. Sec. 62-4333. Applicability. is created as follows:

Section 62-363362-4333. Applicability.

The provisions of this ~~Article~~Division shall apply to the unincorporated areas of Brevard County. The requirements to remove Non-Native Noxious Invasive Plants at the time of development and control re-growth of such plants in the required area within the site shall apply countywide and prospectively to property after the effective date of this ordinance.

SECTION 6. Sec. 62-4334. Exemptions. is created as follows:

Section 62-363462-4334. Exemptions.

The following land uses and ~~or~~ activities shall be exempt from the requirements of this ~~Article~~Division:

- (1) ~~Per Pursuant to~~ the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land ("Green Belt") pursuant to Section 193.461, Florida Statute.
- (2) Single family lots that are 1.25 acres or less are exempt from the canopy and preservation requirements of this ~~Article~~Division as long as minimum landscaping requirements as may be required by this ~~Article~~Division are met and maintained.
- (3) Single family lots that are more than 1.25 acres but less than or equal to 2.5 acres are exempt from the canopy and preservation requirements of this ~~Article~~Division as long as Heritage Tree, Specimen Tree and minimum landscaping requirements as may be required by this ~~Article~~Division are met and maintained.
- (4) Single-family properties 2.5 acres or less that have a Certificate of Occupancy are exempt from the requirements of this ~~Article~~Division as long as minimum

- landscaping and tree preservation requirements as may be required by this ~~Article~~Division are met and maintained.
- (5) The removal of any plant that is a Non-Native Noxious Invasive Plant as specified in Section 62-4332 of this ~~Article~~Division except within shoreline protection buffers as defined by Article X, the Brevard County Coastal Construction Setback Line as defined by Article XII, and wetlands as defined by Article X. Within these areas, Non-Native Noxious, Invasive Plant removal is exempt if:
- a. No mechanical equipment is used.
 - b. Roots shall not be removed below ground. Above ground foliage may be cut and stumps treated appropriately.
 - c. Herbicides are used to treat the invasive species as approved for aquatic use.
- Other methods ~~will may~~ be considered ~~on a case-by-case basis subject to approval of a waiver pursuant to~~ pursuant to the waiver provisions set forth in Section 62-4344.
- (6) Linear Projects that are public or privately ~~owned~~-constructed except when part of a site plan or subdivision, exclusively for public throughway transportation from the tree protection and canopy preservation requirements but not landscaping code requirements. Such ~~Linear~~ projects include federal, state and county roadways, such as arterial and collector roads, ~~that do not terminate on or at private lands or serve exclusively residential subdivisions or commercial/industrial parks, and would exclude internal roads for subdivisions, roads that are part of a subdivision or commercial site plan, or other roads proposed for private use and not constructed for the primary purpose of public thoroughfare or commerce transportation,~~ sidewalks, trails and paths. ~~Such projects are exempt from tree protection and canopy requirements but still shall comply with landscaping requirements.~~
- (7) Emergency removal of a dead or seriously damaged tree that adversely affects the health, safety and welfare of the property owners or the general public.
- (8) When the proposed land clearing activity is regulated by another ~~State of Florida state~~ or federal agency, ~~which and such~~ regulations may pre-empt local regulations. ~~supercede those of the County.~~
- (9) The removal of vegetation that has been ordered by the County, pursuant to the provisions of Chapter 114, Article II. Prior to issuing the order for removal of vegetation pursuant to the provisions of chapter 114, Article II, Code Enforcement shall consult NRMCO. ~~if~~ the removal conflicts with the requirements or intent of this ~~article~~Division, the County manager or designee shall negotiate a resolution of the conflict.
- (11) All lands that have an existing land clearing permit, approved site plan or building permit shall be exempt from ~~the~~ requirements of this ~~article~~Division that are inconsistent with the previous ordinance.
- (12) ~~Clearing for purposes of surveying if the width to be cleared is less than that for which a survey permit is required as specified in Section 62-3638 (6).~~

SECTION 7. Sec. 62-4335. Non-Bona Fide Agricultural Land Clearing Activities.
is created as follows:

Section 62-3635-62-4335. Non-Bona Fide Agricultural Land Clearing Activities.

- (1) To the extent provided by law, Any activity of a Bona Fide Agricultural Use on land classified as agricultural land ("Green Belt") pursuant to Section 193.461, Florida Statute is exempt from the requirements of this ArticleDivision (see Section 62-4334, Exemptions). However, land clearing activities on lands not classified as "Green Belt" pursuant to Section 193.461, Florida Statute shall meet the following requirements:
 - a. NRMCO shall be provided with a completed Non-Bona Fide Agricultural Land Clearing Application.
 - b. NRMCO shall be provided one (1) copy of a completed and signed Conservation Plan from USDA.
 - c. The proposed Agricultural Activity shall be a use or activity permitted by the existing zoning of the property.
 - d. Abutting properties shall be notified by the applicant of the proposed land clearing activity. Written verification of the notification shall be required by NRMCO.
 - e. Properties where the proposed Agricultural Activity is not a Bona Fide Agricultural Use, shall be subject to the roll-back requirements in this ArticleDivision as defined in Section 62-4332, Definitions.
- (2) Proposed Bona Fide Agricultural Use land clearing activities on lands that are proposed, but not yet classified as "Green Belt" pursuant to Section 193.461, Florida Statute shall be subject to the Roll Back requirements in this ArticleDivision as defined in Section 62-4332, Definitions.

Section 62-3636. Violations.

~~Penalties and enforcement for violations of this Article shall be as specified in Chapter 62-Section 5 and Chapter 2, Brevard County Code, as amended. Each quarter acre, or fraction thereof, of land clearing in violation of this Article shall constitute a separate violation. If Protected Trees are cut down on or removed from the site, each tree shall constitute a separate violation. In addition, both fines and restoration shall be required. If one or more specimen or Heritage Trees are cut down on or removed from the site, each tree shall constitute a separate violation and require triple fines, replacement, and restoration. The director of NRMCO or his/her designee shall be responsible for reviewing and approving all restoration plans. The provisions of this section are an additional and supplemental means of enforcing County codes and ordinances. Nothing in this section shall prohibit the County from enforcing this Article by injunctive relief, issuance of stop work orders or by any other means provided by law. In addition, properties that are in violation of this Article shall not have permits approved nor Certificate of Occupancy or Completion issued pursuant to this Article until the violation has been resolved to the satisfaction of the County. At the request of the Special Magistrate, fine recommendations may be made using the calculations outlined in Section 62-3644 (3). Fines that are collected will be deposited into a trust fund to be utilized for re-vegetation, restoration and management of public conservation lands or for the purchase of environmentally sensitive lands. It is expected that collected funds will be utilized not accrued for future use. All acquisitions made through this program shall be voluntary.~~

SECTION 8. Sec. 62-4336. Penalties and Remedies. is created as follows:

Section 62-4336. Penalties and Remedies.

- (1) General Penalties

Unless permitted through an After-The-Fact Permit, violations of this Division shall be punished pursuant to Section 62-5 and Section 1-7, Brevard County Code, as amended. Violations of this Division are considered irreparable and irreversible in nature.

(2) Special Provisions

- a. Each quarter acre, or fraction thereof, of land clearing in violation of this Division shall constitute a separate violation.
- b. If Protected Trees are cut down on or removed from the site, each tree shall constitute a separate violation.
- c. The Board of County Commissioners may establish a schedule of fines to be assessed pursuant to Section 2-176 by resolution.
- d. The Board of County Commissioners may establish by resolution both mitigating and aggravating factors to be considered in assessment of a fine imposed pursuant to Section 2-176, Brevard County Code.

(3) Additional Remedies

In addition to any fines imposed one or more of the following remedies shall apply:

- a. Stop-work orders
 - i. Properties that are in violation of this Division shall not have permits approved nor certificate of occupancy or completion issued pursuant to this Division until the violation has been resolved to the satisfaction of the County.
 - ii. The NRMO Director or designee may issue a stop-work order immediately on verification of the violation by the County. A property owner may request a hearing pursuant to the applicable County Code.
- b. Restoration and Replacement
 - i. If one or more specimen or heritage trees are cut down on or removed from the site, restoration and replacement shall be required.
 - ii. Restoration and replacement is preferred for all other violations.
 - iii. The NRMO Director or designee shall be responsible for reviewing and approving all restoration plans.
- c. Mitigation as provided for in Section 62-4344 of this Division.

- (4) Fines assessed pursuant to Section 2-176, Brevard County Code, that are collected will be deposited into a trust fund to be utilized for re-vegetation, restoration and management of public conservation lands or for the purchase of environmentally sensitive lands. It is expected that collected funds will be utilized – not accrued for future use. All acquisitions made through this program shall be voluntary.

SECTION 9. Sec. 62-4337. Permit Application Requirements and Review Process. is created as follows:

Section 62-363762-4337. Permit Application Requirements and Review Process. Unless specifically exempted by Section 62-4334 (Exemptions), a permit shall be required prior to any land clearing activities, cutting, clearing, digging, filling or otherwise injurious activity to existing vegetation. NRMO shall provide application forms for those properties not part of an application for a building permit, subdivision or site plan. If a property is the subject of a building permit, subdivision or site plan permit, the

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information required in this section shall be provided in the appropriate application. Prior to submittal of the plans required in this section, the applicant is strongly encouraged to meet with the County to discuss the requirements of this Article~~Division~~. All landscape and ~~/or~~ land clearing plans shall be prepared by a Recognized Knowledgeable Person. All plans submitted for landscaping and ~~/or~~ land clearing permits that are part of a subdivision or site plan application, shall be approved in writing by a professional civil engineer, professional architect or landscape architect, registered in the State of Florida and proficient in site design.

(1) Application Requirements:

- a. Name, address and phone number. If the applicant is not the property owner of record, written authorization from the property owner ~~to apply on his/her behalf~~ is required.
- b. Legal description of the property.
- c. Location map showing the property's relationship to nearby roads and landmarks.
- d. Boundary survey drawn to scale not to exceed one inch to 100 feet, depicting all existing and proposed structures, lot dimensions, and location and amount of clearing proposed.
- e. Survey of all existing Protected Trees and Canopy Coverage, and identified to species and dbh. For properties greater than five (5) acres, an alternative methodology of locating individual trees may be used if the methodology is approved by NRMO. The tree survey shall be prepared by a professional land surveyor registered in the State of Florida.
- f. Depiction of existing and proposed tree canopy boundaries.
- g. The zoning district classification and land uses for the property and abutting properties.
- h. Wetlands and their boundaries that have been delineated pursuant to Chapter 62-340, Florida Administrative Code, as amended.
- i. Proposed use of the property.
- j. Aerial photograph depicting location of proposed activities on the property.
- k. If the application is for approval of a landscape plan as part of a building permit, subdivision or site plan application, the following additional information is required on the plans.
 - i. All parking areas.
 - ii. All other Vehicular Use Areas, access aisles and drives.
 - iii. Natural and man-made water bodies.
 - iv. On-site sewage disposal systems or central sewer lines.
 - v. Location of proposed source of irrigation supply.
 - vi. Size, number and species of all required landscape materials.
 - vii. Description and location of all existing trees and native vegetation and vegetative communities to be preserved.
 - viii. All existing and proposed utility and drainage easements, poles or structures.
 - ix. All applicable setback and buffers as may be required by Article X and XII of this Chapter.
 - x. Limits of fill, excavation, and clearing with applicable square footages.
- l. Any other information that is necessary to determine compliance with the County's land development regulations.

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- (2) Review Process for applications other than building permits:
 - a. Upon receipt of the application and fee, NRMO shall review the application within fifteen calendar (15) days to determine that all required information has been submitted and is sufficient for review purposes. This review period may be extended by NRMO due to unusual circumstances, including but not limited to, natural disasters resulting in an increased workload. The applicant shall be notified of the deficient items. Upon submittal of the deficient or missing information by the applicant, NRMO shall review the application to determine that the requested information has been provided. If the requested information has not been provided or is insufficient, the applicant shall be notified that no further review will be performed by NRMO until the requested information is provided or sufficient.
 - b. Once the application has been deemed complete or the applicant has notified NRMO in writing that no further information will be provided, NRMO shall review the application within fifteen calendar (15) days to determine its compliance with the performance standards contained in this [Article Division](#) and shall either approve or deny the permit application. This review period may be extended by NRMO due to unusual circumstances, including but not limited to, natural disasters resulting in an increased work load.
- (3) Building Permit Applications shall be processed and reviewed through the Building Code Office procedures.

SECTION 10. Sec. 62-4338. Land Clearing Performance Standards. is created as follows:

Section 62-3638-62-4338. Land Clearing Performance Standards.

Unless specifically exempted by Section 62-4334, all land clearing activities shall meet the performance standards for the applicable activity listed in this section. Land clearing activities for lands with existing Certificates of Occupancy or Completion shall meet the minimum standards in Sections 62-4338 and 62-4339 in perpetuity except as allowed by this [article Division](#) and as approved by NRMO. Any land clearing activities shall be in compliance with [Chapter 62, Articles II, X, XII, and XIII](#) of the County Code. All land clearing activities shall comply with the following performance standards.

- (1) A land clearing permit shall expire 90 days from the date of issuance for single-family lots and shall expire concurrently with the construction permit for subdivisions and multifamily, commercial, institutional, public and industrial projects. Two, thirty (30)-day extensions may be authorized by the County Manager or designee for single-family residential provided appropriate justification warrants, such as unusual weather, seasonal situations or inability to obtain permits from other agencies.
- (2) ~~Where a written land clearing permit has been issued, t~~he applicant shall post the land clearing permit on the affected property in such a manner as to be visible from an abutting road ~~right-of-way~~. The land clearing permit shall remain posted on the affected property during all applicable land clearing activity. It is the responsibility of the applicant to maintain the land clearing permit in a clearly visible manner at all times.
- (3) The trimming, pruning, maintenance or removal of Mangroves shall be consistent with applicable federal or state regulations. Permits from appropriate agencies

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- shall be provided for verification prior to the issuance of a land clearing permit by the County.
- (4) Vegetative buffers or other ground covers that retard erosion must be established or installed within seven (7) days after final grade of a subdivision, commercial, industrial or multi-family project has been obtained or within fourteen (14) days after the last construction activity has occurred. Erosion and sedimentation control measures shall be in compliance with the Best Management Practices as outlined in the *Florida Stormwater, Erosion, and Sedimentation Control Inspectors Manual*. 2005. Florida Department of Environmental Protection and Florida Department of Transportation, as may be amended and as required by Chapter 62-25, Florida Administrative Code, as may be amended.
- (5) The Buildable Area of a single-family residential lot or parcel, including lots or parcels in the AU zoning category, in excess of one-half acre which has been designated on a landscape plan as an area on which no alterations shall occur shall be considered for the purposes of this ~~D~~ivision to be one-half acre. Where clearing takes place on more than one-half acre, the Buildable Area shall be considered to be that amount of land that has been or is being cleared or altered.
- (6) *Survey permit.* A survey permit is required for clearing for surveys, ~~greater than five feet in width and~~ soils testing and engineering testing, ~~greater than eight feet in width or within building setback areas, shoreline protection buffers, coastal construction setback areas, wetlands and other similar areas required pursuant to the applicable provisions of Articles II, VI, X, XII and XIII of this Chapter.~~ Protected Trees may not be cleared for survey or soil and engineering testing purposes.
- a. ~~Prior to any land clearing for surveying greater than five feet in width or soils testing or engineering testing greater than eight feet in width with a reasonable turnaround, t~~he owner of the property proposed to be cleared, or the authorized agent, shall submit an application for the proposed land clearing activity to the County, on such form as provided by the County. The survey permit shall expire 30 days from the date of issuance. The County Manager or designee may grant an administrative waiver for an additional 30 days for hardship beyond the owner's control, including adverse weather, size of property and inability to obtain permits from other agencies.
- b. ~~Where a written survey permit has been submitted, t~~he applicant shall post the survey permit on the affected property in such a manner as to be visible from an abutting road right-of-way. The survey permit shall remain posted on the affected property during all applicable land clearing activity. It is the responsibility of the applicant to maintain the survey permit form in a clearly visible manner at all times.
- c. The survey permit shall be limited to the minimum amount required by the activity and shall not exceed ten (10) feet.
- (7) If the project is not completed prior to the expiration date of the Active Development Order, the cleared areas shall be vegetated to the minimum canopy preservation, tree preservation and landscaping standards.
- (8) No land clearing permit shall be issued prior to approval of a site plan, subdivision, building permit, land alteration permit or private lake permit. No land clearing shall take place prior to the issuance of the required land clearing permit.

SECTION 11. Sec. 62-4339. Canopy and Tree Preservation Performance Standards. is created as follows:

Section 62-3639-62-4339. Canopy and Tree Preservation Performance Standards.

Unless specifically exempted by Section 62-4334, all development shall meet the performance standards listed in this section.

- (1) The amount of Canopy Coverage preservation on each property shall be determined using the following standards based on the property's Buildable Area:

| Land Use | Minimum <u>Canopy</u> Preservation of the Buildable Area | Canopy Achieved by Planted Trees of the Buildable Area | Total <u>Canopy</u> Percentage of the Buildable Area |
|-----------------------------------|--|--|--|
| Single-Family Residential | 20% | 10% | 30% |
| Multi-Family Residential | 15% | 10% | 25% |
| Commercial, Institutional, Public | 10% | 10% | 20% |
| Industrial | 10% | 5% | 15% |

- a. No more than fifty percent (50%) of planted trees shall be of any one genus (i.e. *Quercus*, *Pinus*, *Acer*, etc.) to encourage biodiversity and decrease impacts from disease.
 - b. Preserved trees shall have a root protection zone and protective barriers during construction which encompass the root protection zone.
 - c. Credits for canopy preservation greater than the minimum required shall be given in accordance with the provisions in Section 62-4343.
 - d. Canopy preservation areas in new subdivisions, industrial or commercial developments shall be within separate tracts or conservation easements with sufficient protective language to prohibit activities that are detrimental to the perpetual preservation of the area.
 - e. Activities permitted within canopy preservation areas include landscaping, passive recreation areas, fences, boardwalks, trails, common use decks and paths as long as these areas are pervious and not within the root protection zone of any tree, and do not necessitate the removal of vegetation. Boardwalks and trails may not exceed six (6) feet in width. Decks may not exceed twenty-five percent (25%) of the total root protection zone. Habitat management practices, such as prescribed fire, may occur within the root protection zone.
 - f. Credit for canopy preservation shall not be given for areas excluded from the Buildable Area.
 - g. Canopy Coverage achieved through the use of planted trees shall be credited at twenty-five percent (25%) of the projected canopy at maturity of the species as specified in Appendix C. If the actual canopy of the planted tree is larger than twenty-five percent (25%) of the mature canopy size, actual Canopy Coverage of the particular tree shall be credited.
 - h. Existing trees that are successfully relocated elsewhere on the property can be credited towards the Canopy Coverage requirements but shall not be credited towards preservation requirements.
- (2) All development subject to this ArticleDivision shall preserve Protected Trees unless specifically exempted herein.

- (3) Where on-site canopy and tree preservation performance standards cannot be met due to Adverse Site Conditions, the process and standards in Section 62-4344 shall be applied.

SECTION 12. Sec. 62-4340. Landscaping Performance Standards. is created as follows:

Section 62-3640-62-4340. Landscaping Performance Standards.

Unless specifically exempted by Section 62-4334, all development shall meet the performance standards listed in this section.

- (1) No ~~Active Development Order, Certificate of Occupancy or Certificate of Completion~~ shall be issued by the County without full satisfaction of the following landscaping requirements by the applicant in accordance with the approved Development Order for such Active Development Order, Certificate of Occupancy or Certificate of Completion.
- (2) Satisfaction of the landscaping standards shall be achieved through the preservation of existing native vegetation to the Greatest Extent Feasible. When the minimum landscaping standards cannot be achieved through preservation, plantings of new vegetation shall be required to meet the standards.
- (3) All development shall meet the following standards through preservation, plantings, or a combination thereof:

| | |
|--|-----|
| <i>Minimum Trees Per Acre of Buildable Area</i> Minimum size specifications shall be as outlined in Section 62-4340 (8) Lots containing less than one acre of Buildable Area shall provide no less than five (5) trees. | 5 |
| <i>Minimum Inches of dbh per acre of Buildable Area</i> No less than fifteen (15) inches dbh per ¼ acre or fraction thereof. | 60 |
| <i>Minimum Number of Shrubs and Groundcovers, Not Including Sod, per Acre of Buildable Area (or fraction thereof)</i> Minimum standard is a three-gallon fully rooted 15-18 inches in height shrub or equivalent. Preservation of 25 square feet of native understory is equal to one three gallon fully rooted 15-18 inches in height planted shrub. | 250 |

All plantings shall be at least Florida No. 1 grade as defined by the *Grades & Standards for Nursery Plants*. 1998. Division of Plant Industry, Florida Department Agriculture and Consumer Services, as may be amended.

- (4) At least fifty percent (50%) of trees required for preservation ~~and/or~~ and planting shall be of native species. At least fifty percent (50%) of shrubs and groundcovers shall be native species or recommended by "Waterwise Florida Landscapes. 2004. Florida Water Management Districts, as may be amended.
- (5) Road frontage and Vehicular Use Areas.
This section does not apply to single-family lots, parcels or lots platted as part of an previously approved subdivision. For residential subdivisions and commercial, public, institutional, or industrial projects, the following specific locational landscape requirements shall be satisfied:
- a. Type B, roadway buffer in accordance with the vegetative buffering requirements of this Division.

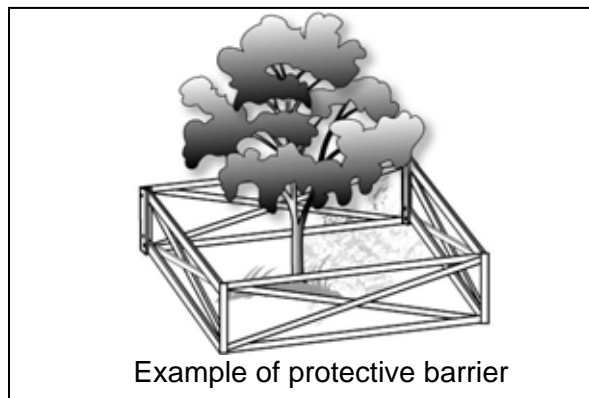
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- b. Street Plantings. A continuous landscaped buffer shall be constructed along sidewalks and public or private ~~roads rights-of-way~~ internal to the project except for safety requirements at points of ingress and egress into the property and intersections, ~~with other rights-of-way~~. Such landscape buffers shall be a minimum of eight (8) feet in width and shall contain trees planted a maximum of forty (40) feet on center along the entire length. There shall be no parking or structures other than permitted signage located within this vegetated area. All landscaped areas, including trees located in public rights-of-way that are counted towards the fulfillment of this requirement, shall be properly maintained in accordance with the approved landscape plans. Appropriate tree selection shall be approved by NRMO. If a tree or any plant material dies, it shall be replaced so as to meet all requirements of this Article~~Division~~.
 - c. To mitigate the Heat Island Effect, Vehicular Use Areas ~~parking areas~~ shall have appropriate shading.
 - i. For each ten parking spaces, one landscape island and tree shall be provided. For all Vehicular Use Areas~~parking lots~~, fifty percent (50%) of the required trees shall be large species of minimum size. Medium size tree species shall also meet minimum size requirements. Small species trees may be planted but shall not be credited towards the fulfillment of these requirements.
 - ii. Parking spaces immediately abutting a landscape buffer required pursuant to Section 62-4341 or vegetated lands of comparable quality subject to a perpetual conservation easement shall be exempted from this subsection. ~~Where the parking space immediately abuts the required or provided landscaping adjacent to a public road right-of-way that meets the standards in Appendix B, that parking space shall be exempted from this subsection.~~
 - iii. Where bus, recreational vehicle, boat, motorcycle, golf cart, or any other non-standard spaces are provided, a landscape island twice the size of each non-standard space shall be provided for each ten non-standard spaces. There shall be one planted or preserved tree (minimum three (3) inches dbh) for every 300 square feet contained within the landscape island.
 - iv. Vehicular Use Area landscaping shall be evenly distributed throughout the parking area.
 - v. For all sites, there shall be no more than fifteen (15) consecutive spaces permitted without a required landscape island.
 - vi. For all Vehicular Use Areas~~parking areas~~, islands shall not be less than twelve (12) feet in width for medium size tree species or fifteen (15) feet in width for large size tree species. Length will be determined by the length of the adjacent parking space.
 - d. For commercial and industrial uses, for each 400 square feet of Vehicular Use Area other than parking, there shall be an additional ten (10) square feet of landscaping. The placement of this must be in association with the Vehicular Use Area and shall be integrated within the Vehicular Use Area in a manner compatible with vehicular movement.
- (6) Additions or modifications to existing structures.
Any applicant for an Active Development Order for an external expansion, modification or addition to structures existing on the property, where the

- expansion or addition shall increase the applicable floor area of the structure project at least twenty-five percent (25%) shall comply with all landscaping requirements specified in this ArticleDivision. Where demolition of existing buildings or creation of separate buildings is being proposed or has occurred, these areas shall meet current performance standards. Where Vehicular Use Areas parking areas are being expanded or replaced, altered, such areas shall be required to meet the standards in Section 62-4340(5) as applicable.
- (7) Standards for plant materials. Whether preserved or newly planted, all plant materials utilized to satisfy the landscaping requirements in this Division shall conform to the standards for Florida No. 1 grade as defined by the *Grades & Standards for Nursery Plants*, 1998. Division of Plant Industry, Florida Department of Agriculture and Consumer Services, as may be amended.
- (8) Minimum size of newly planted trees. Trees used to fulfill the landscaping requirements in this ArticleDivision, shall meet the following overall height, diameter (dbh) and Spread requirements, at the time of planting, by species classification:
- a. For single-family residential uses:
 - i. Trees: Eight (8) feet tall with one inch diameter (dbh) minimum and two-foot Spread.
 - ii. Palms: Eight (8) feet of Clear Trunk.
 - b. For multi-family, commercial, institutional, and industrial uses:
 - i. Large species: Twelve (12) feet tall with three (3) inch diameter (dbh) minimum and five (5) foot Spread, and if required to be planted within Vehicular Use Areas at least 300 square foot Pervious Area.
 - ii. Medium species: Ten (10) feet tall with one inch (1) inch diameter (dbh) minimum and three (3) foot Spread, and if required to be planted within Vehicular Use Areas at least 240 square feet Pervious Area.
 - iii. Small species: Eight (8) feet tall with one (1) inch diameter (dbh) minimum and two-foot Spread.
 - iv. Palms: Ten (10) feet of Clear Trunk.
- (9) Use of palms. Preservation of palms, or the planting of palms, may only be used to satisfy up to twenty-five percent (25%) of the required landscaping unless beachsidebarrier island conditions prohibit the use of less salt-tolerant plants. In no event shall more than 24 palms per acre be utilized to satisfy the landscaping requirements in this division.
- (10) Use of synthetic plants. In no event shall synthetic plants such as manmade, plastic, rubber or silk plants be used for landscaping credits. Removal of existing landscape materials for installation of synthetic plants is prohibited.
- (11) Selection of plant materials. The selection of new plant materials to satisfy the landscaping requirements in this Division shall be compatible with the proposed use of the site, type of soils, hydroperiods, climate, water quality and other general environmental concerns.
- (12) Location of plant materials. The vegetation utilized to satisfy the landscaping requirements in this ArticleDivision shall be located on the site in such a manner that the vegetation shall:
- a. Not interfere with drainage systems or utility services or create an unsafe visual clearance or other safety hazard. This does not prohibit the

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- appropriate plantings in stormwater retention or detention areas or within utility easements, ~~if approved by the County Manager or designee.~~
- b. Be placed in a manner that will not interfere with vehicular or pedestrian traffic and circulation or visibility, ~~both within a project and at the entrance or exit of a project.~~
 - c. Be protected from vehicular encroachment.
- (13) Protection of preserved vegetation during construction. All vegetation to be preserved on the site must be protected to ensure survivability during and after construction on the site. An applicant shall provide to NRMO the proposed methods of vegetation protection that will be utilized during and after construction. The methods shall be approved by NRMO prior to issuance of the land clearing permit. Protective methods and barriers for preserved vegetation shall be deployed prior to the beginning of construction or any alteration of the site. No soil disturbance or compaction, construction materials, traffic, trenching, fill or other land disturbing activities are allowed within the root protection zone of preserved vegetation.



- (14) Site preparation. Before landscape installation, the applicant shall provide documentation that the soils are suitable for the prescribed plantings. Any soil amendments shall be preformed in accordance with accepted industry standards. soil samples from the areas to be planted should be evaluated for pH and drainage capacity. These results are to be noted and recommended Soil Amendments such as yellow sand, charcoal, dolomite lime, perlite, or compost will be added as needed to ensure proper growth and drainage for the planting environment. In areas where soils have been compacted or hard pan exists, these soils will be removed and replaced with a soil mixture to ensure proper growth and drainage for the planting environment. When necessary, the soils shall be amended to a depth 1.5 times and twice the diameter of the root ball of the plant. Soil Amendments shall be approved by staff prior to installation. For multi-family, institutional, public, residential subdivisions, commercial and industrial development, certification by a registered or certified landscape professional will be required as proof that such Soil improvements Amendments have been made prior to the issuance of the Certificate of Occupancy or Completion.
- (15) Prior to the issuance of the Certificate of Occupancy or Certificate of Completion for single-family, subdivision, multifamily, commercial, and industrial projects, and at the time of development of government-owned lands, all Non-Native Noxious Invasive Plants, as defined in this Article Division, shall be removed. For lots

greater than five (5) acres, the requirement to remove and control re-growth of Non-Native Noxious Invasive Plants applies to five (5) contiguous acres to and including the Buildable Area as defined in section 62-4332. After the issuance of the Certificate of Occupancy or Certificate of Completion, re-growth of Non-Native Noxious Invasive Plants shall be controlled in perpetuity. The requirements to remove Non-Native Noxious Invasive Plants at the time of development and control re-growth of such plants in the required area within the site shall apply countywide and prospectively to property after the effective date of this ordinance.

- (16) For projects using Xeriscaping™ or Water-Wise Landscaping, the following criteria shall be met:
- a. Landscape plans must clearly demonstrate that plant species are grouped by hydrozones ~~water requirements~~ (i.e., natural areas, drought tolerant areas, and oasis areas). In addition, the landscape must be installed as detailed in the landscape plan.
 - b. Property must be one hundred percent (100%) free of Non-Native Noxious Invasive Plants.
 - c. A layer of at least three (3) inches of non-synthetic inorganic or organic mulches must be present. The use of mulch containing Chromated Copper Arsenate (CCA) is expressly prohibited. NRMO has the authority to inspect and require testing of newly placed mulch material for CCAs and the responsibility to deny final approval of a landscape plan if mulches containing CCAs are used.
 - d. No more than fifty percent (50%) of the landscape shall be equipped with high volume (micro) irrigation delivery systems.
 - e. Soil analysis and letter confirming appropriate amendments must be submitted to NRMO.
 - f. Property must be free of nuisance vegetation ~~weeds and pests and not declared as an overgrowth public nuisance~~ as defined in Chapter 114, Article II.
 - g. Landscape must be appropriately maintained. Improper pruning shall not constitute appropriate maintenance. In no event shall overgrowth as defined in Chapter 114, Article II be allowable as Xeriscaping™ or Water-Wise Landscaping.
 - h. Consistent with Florida Law, the automatic irrigation system, if any, must be equipped with an automatic rain sensor shut-off device.
 - i. If criteria a- through h are met in their entirety, NRMO may provide special recognition in the form of a listing on the Brevard County web site and/or via signage to be displayed in the landscape and a fifty percent (50%) reduction of the required shrubbery square footage per acre of Buildable Area shall be credited.
- (17) Performance bond. When the County Manager or designee determines that circumstances indicate that the planting of trees or vegetation prior to the issuance of a Certificate of Occupancy or Certificate of Completion would not be prudent, for reasons such as an improper time of year for the planting of trees, the applicant may post a performance bond with the Board of County Commissioners, in a form acceptable to the County. The performance bond, if posted, shall be in an amount of no less than one hundred twenty-five percent (125%) of the estimated cost of all trees and vegetation to be planted, plus labor, pursuant to the requirements of this division. The performance bond shall be

received and accepted by the County prior to the issuance of the Certificate of Occupancy or Certificate of Completion.

(18) Removal and replacement criteria.

a. Removal criteria.

A Protected Tree in excess of the minimum number of trees required for preservation, as specified in this Article~~Division~~, shall be approved for removal by NRMO if one or more of the following criteria are met:

- i. Where site design modifications, as determined by a pre-clearing inspection, are not feasible to allow the use permitted, as determined by the specific zoning of the subject property. Streets, rights-of-way, easements, utilities, lake perimeters, septic tanks, and lot lines shall be shifted whenever possible to preserve trees.
- ii. Where the trunk of a Protected Tree is located closer than ten feet, or 25 feet for any protected pine, from the foundation of the proposed structure, and it is not feasible to relocate the structure.
- iii. Where the location of the tree prevents any access to the property from a publicly dedicated and maintained roadway, or where the tree constitutes a hazard to pedestrian or vehicular traffic that cannot be mitigated without removing the tree.
- iv. Where the location of the tree prevents the construction of utility lines, drainage facilities, on-site sewage disposal systems, roadways or required Vehicular Use Areas parking areas which cannot be practically relocated or rerouted or where the trees cannot be utilized as part of these systems.
- v. Where the tree is weakened by age, storm, fire or other injury so as to pose a danger to persons, property, site improvements or other trees.
- vi. Where ~~the tree or~~ trees reduce ~~the~~ visibility of a nonresidential development more than fifty percent (50%) of the linear footage of the lot along the roadway to which the project has primary frontage.

b. Replacement criteria.

Where the removal of a protected tree meets any one or more of the criteria identified in subsections (18)a(i), (18)a(ii), or (18)a(vi), the applicant may choose one of the following options to be included as part of the required landscape requirements:

- i. The applicant shall provide one or more native canopy species trees to replace the removed tree where the total dbh of the replacements is equal to one hundred and fifty percent (150%) of the total dbh of the tree or trees removed.
- ii. The applicant may relocate or transplant the protected tree elsewhere on the same lot or parcel of land if there is a source of water and adequate irrigation system on the site to ensure viability of the transplanted tree.

SECTION 13. Sec. 62-4341. Landscape Buffers. is created as follows:

Section 62-3641-62-4341. Landscape Buffers.

The purpose of the vegetative buffering requirements set out in this section is to provide visual and physical screening and buffering between potentially incompatible uses and

to reduce the effects of glare, noise and incompatible activities, to include commercial, institutional, and industrial uses when they abut existing residential uses.

- (1) Type A, Compatibility Buffer. Where a fence or wall is required by Article VI of this Chapter, the Type A buffer, as defined in this subsection, may be utilized in lieu of the required fence or wall. This buffer classification shall be used to separate commercial, institutional, or industrial uses from residential uses. The Type A buffer shall be completely opaque from the ground up to a height of at least six feet, except where located within 25 feet of a road ~~right-of-way~~, where it shall be four feet in height. In conjunction with this buffer, a minimum 20-foot vegetated area shall be provided. There shall be no parking or structures other than permitted signage located within this vegetated area.
 - a. The opaque buffer may utilize a masonry wall, wood fence, Landscaped Earth Berm, planted or existing vegetation or any combination thereof that maintains a completely opaque buffer.
 - b. Location of fences and walls. Where a fence or wall is used to fulfill the screening requirements within a vegetative buffer, it shall be located one foot inside of the property line that abuts the residential zoning. When an impediment such as a drainage easement, ditch or water body runs along a property line, an administrative waiver may be granted by the NRMO Director or designee to allow the masonry wall or fence to be placed along the edge of the ditch or water body instead of on the property line. Where there are existing trees within the buffer area, the fence or wall shall be located so as to preserve the trees.
- (2) Type B, Roadway Buffer. This buffer classification shall be required for all development excluding individual single-family homes not within platted subdivisions. ~~Subdivisions shall provide external Type B buffer and street plantings per Section 62-3640.~~ This buffer shall be landscaped, be located adjacent to any public road right-of-way and have a minimum width of 15 feet. There shall be no parking or structures other than permitted signage located within this vegetated area.
- (3) Planting requirements. The planting requirements for the Vegetative Buffer Areas shall be consistent with Appendix B as amended, and shall be credited toward the overall landscaping requirements. Minimum buffering and landscaping of Vehicular Use Areas parking areas shall be met regardless of other requirements.
 - b. ~~Location of fences and walls. Where a fence or wall is used to fulfill the screening requirements within a vegetative buffer, it shall be located one foot inside of the property line that abuts the residential zoning. When an impediment such as a drainage easement, ditch or water body runs along a property line, an administrative waiver may be granted by the NRMO Director or his/her designee to allow the masonry wall or fence to be placed along the edge of the ditch or water body instead of on the property line. Where there are existing trees within the buffer area, the fence or wall shall be located so as to preserve the trees.~~

SECTION 14. Sec. 62-4342. Maintenance and Inspections. is created as follows:

Sec. ~~tion 62-3642~~ 62-4342. Maintenance and Inspections.

- (1) Except as allowed by Section 62-4340 (18), the health and viability of all required landscape materials on the site, whether preserved or newly planted, must be

maintained through proper care or replacement in perpetuity after issuance of the Certificate of Occupancy, Certificate of Completion, or restoration as may be required to resolve a code violation.

2)(2) For multi-family, residential subdivisions, commercial, institutional, and industrial projects, the County may perform a courtesy inspection of the landscaping within 90 days after issuance of the Certificate of Occupancy or Certificate of Completion. If the vegetation appears to be under stress, the staff shall notify the property owner. A second inspection may be performed ten to twelve months after the issuance of the Certificate of Occupancy or Certificate of Completion. If the vegetation is not viable at that inspection, notice shall be given to the property owner and the property owner shall be responsible for replacing ~~the that dead~~ vegetation with equivalent landscape material. Failure to have viable landscape materials ~~and~~/or preserved areas consistent with the approved landscape plan after of the issuance of the Certificate of Occupancy or Certificate of Completion shall constitute a violation as described under Section 62-4336. Failure to remove Non-Native Noxious Invasive Plants and control re-growth prior to the final landscaping inspection is a violation of this ~~article~~Division and shall be enforced pursuant to Section 62-4336. A maintenance bond, cash bond or letter of credit shall be collected in conjunction with the application fee for multi-family, commercial, institutional, and industrial projects equal to twenty-five percent (25%) of the cost of vegetation other than sod. This maintenance bond, cash bond or letter of credit shall be forfeited if vegetation consistent with the approved landscape plan is not maintained in a viable state or if re-growth of Non-Native Noxious Invasive Plants is not controlled for the twelve-month duration of the bond. The County reserves the right to ~~enter~~ cross property to make the necessary inspections.

3)(3) An onsite inspection shall be conducted prior to the approval of the land clearing permit.

SECTION 15. Sec. 62-4343. Incentives for Increased Canopy and Tree Preservation and Increased Landscaping. is created as follows:

Sec. ~~tion 62-3643~~ ~~62-4343~~. Incentives for Increased Canopy and Tree Preservation and Increased Landscaping.

To encourage the preservation of Canopy, Protected Trees, Specimen Trees and Heritage Trees, the following incentives are provided.

- (1) For preservation of canopy greater than the minimum total canopy required for the land use and its associated root protection zone, a density bonus equal to one hundred percent (100%) of the excess canopy preservation area shall be

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granted not to exceed one hundred and fifty percent (150%) of the density assigned to the property. If other density transfers or bonuses are used in combination with this incentive, the overall density of the property shall not exceed one hundred and fifty percent (150%) of that permitted by the zoning district.



Example of Density Bonus

- (2) Preservation of vegetation of special concern.
- In addition to credit for additional preservation of trees or canopy, landscaping credit may be accumulated for the preservation on the site of any of the following vegetation of special concern that is in a healthy condition:
- a. For each one hundred (100) square feet of land containing no dimension less than ten (10) feet, that is predominately vegetated by rare, endangered or threatened plant species as listed in Volume 5, *Plants, Rare and Endangered Biota of Florida*, University Presses of Florida, Gainesville, Florida, and as listed in Section 581.185, Florida Statute, the property owner shall receive 200 square feet of landscape credit for that class of vegetation. No species of Mangroves shall be eligible for points under this subsection.
 - b. For each one hundred (100) square feet of vegetation classified as hardwood hammock, barrier island scrub, cypress domes or sand pine scrub associations preserved on the site, total tree planting requirements shall be reduced by five percent (5%) when the vegetative community is preserved intact; and the vegetative community preserved comprises an area of no less than one hundred (100) square feet with no dimension less than ten feet.
 - c. For each one hundred (100) square feet of vegetation classified as barrier island association preserved on the site, landward of the County Coastal Setback Line, total landscaping requirements shall be reduced by five percent (5%) when the vegetative community is preserved intact and the vegetative community preserved comprises an area of no less than one hundred (100) square feet with no dimension less than ten feet.
 - d. For each one hundred (100) square feet of native vegetation preserved adjacent to a scenic vista or public roadway classified as arterial or

collector, Type B Roadway Buffer requirements may be waived for the equivalent area if the native vegetative community is preserved and maintained intact and the vegetative community preserved comprises an area of no less than one hundred (100) square feet with no dimension less than ten (10) feet.

- e. If Mangroves do not presently exist on shorelines contiguous to estuarine waters and are planted on four-foot (4) centers, the requirements for shrubs may be reduced accordingly. The minimum size of newly planted Mangroves shall be fully rooted 3-gallon container plants with a minimum height of 15-18 inches.
- f. For preservation of each Specimen or Heritage Tree, the corresponding tree planting requirements shall be reduced by the dbh of the Specimen or Heritage Tree divided by four inches.

SECTION 16. Sec. 62-4344. Alternative Landscape Enhancement Plans, Mitigation, Compensation and Waivers. is created as follows:

Section ~~62-3644~~ 62-4344. Alternative Landscape Enhancement Plans, Mitigation, Compensation and Waivers.

In cases of Adverse Site Conditions or hardship, Alternative Landscape Enhancement Plans may be considered. Such plans shall be signed and sealed by a landscape architect registered in the state of Florida except for individual single-family homes not part of a platted subdivision. Alternative Landscape Enhancement Plans may consist solely or a combination of on-site preservation, landscaping enhancement, on-site mitigation, off-site mitigation and compensation. In all cases, the standards for Alternative Landscape Enhancement Plans shall be, in order of priority, on-site preservation of existing native vegetation, on-site landscape enhancement, on-site mitigation, off-site mitigation, and compensation.

- (1) Alternative Landscape Enhancement Plans are intended to provide increased flexibility for sites demonstrating existing Adverse Site Conditions. Alternative Landscape Enhancement Plans shall meet the following performance standards on-site:
 - a. Results in landscaping that exceed specific goals and intent of landscape regulations.
 - b. Provides sufficient tree plantings to achieve a tree canopy equal to five percent (5%) greater than the minimum required at the time of development.
 - c. Provides heat island mitigation and landscape buffers, as required by the landscaping code.
 - d. Replaces Protected Trees with new plantings of the same species at a rate of one hundred and fifty percent (150%) of the cumulative Diameter at Breast Height (dbh) of the trees removed, using minimum four (4) inch dbh plantings.
 - e. Parking shall not exceed the minimum required for the proposed use(s).
 - f. When the applicant provides clear and convincing evidence that demonstrates the canopy preservation and tree preservation performance standards listed within this [article](#) [Division](#) cannot be met on the subject property, the applicant may submit an alternative plan that includes mitigation for consideration.

(2) Mitigation

When the applicant has provided clear and convincing evidence that demonstrates the canopy preservation and tree preservation performance standards ~~listed within this article~~ cannot be met on the subject property, the applicant may submit an Alternative Landscape Enhancement Plan that includes mitigation ~~for consideration~~. Specimen or Heritage Trees are not eligible for consideration of mitigation and must be preserved or relocated on-site. Mitigation can consist of a combination of restoration and replacement of trees and canopy through tree plantings, relocation of trees to another site, (with written authorization from the receiving property owner~~the receiving property owner's or owners' permission~~), off-site canopy preservation or monetary compensation. For all ~~types of~~ mitigation, except for compensation, the applicant is responsible for maintenance in perpetuity and bonding as set forth outlined in Section 62-4342. The types of mitigation and applicable ~~their~~ standards are as follows:

- a. Restoration and Replacement
 - i. For every Protected Tree that cannot be preserved or re-located on-site, the size of the replacement tree shall be at least five (5) inches dbh and the number of planted trees required shall be determined by a ratio of one hundred and fifty percent (150%) of the Protected Tree's dbh.
 - ii. All restoration or replacement areas shall be permanently protected in a conservation easement recorded in the public records in Brevard County.
- b. Relocation
 - i. For every Protected Tree that cannot be preserved or reasonably relocated on-site, the Protected Tree may be relocated to another site acceptable to the County. Reasonable relocation includes techniques such as root pruning, tree spades and other similar techniques. Relocation techniques shall be reviewed and approved by the County prior to being used for any relocation of trees both on and off the property.
 - ii. All relocation areas shall be permanently protected in a conservation easement recorded in the public records in Brevard County.
- c. Off-site preservation. If on-site canopy and tree preservation standards cannot be met and restoration and relocation are not options, then off-site preservation may be considered. Off-site preservation will be based on square footage of canopy at a ratio of two (2) to one (1) of similar quality and diversity. Similar quality and diversity shall be determined by a certified arborist.
- d. When the applicant has provided clear and convincing evidence that demonstrates the canopy and tree preservation performance standards and alterative landscape enhancement plan objectives listed within this article~~Division~~ cannot be met on the subject property or through mitigation, the applicant may submit a compensation proposal for consideration.

(3) Compensation

Compensation for the loss of canopy and Protected Trees shall be determined as follows:

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in Ordinance format with changes from the County Attorney's Office highlighted*

- a. Compensation (C) for trees of known Number REMoved (NREM) and known Total DBH (TDBH) shall be calculated using the costs established by Resolution, ~~No. 06-***, as may be amended.~~
 - b. Compensation for trees of known Number REMoved (NREM) but unknown total diameter shall be calculated using the costs established by Resolution, ~~No. 06-***, as may be amended.~~
 - c. Compensation for trees for which neither the total diameter nor the number can be determined shall be made under the assumption that the site is one hundred percent (100%) forested. Compensation shall be calculated using the costs established by Resolution, ~~No. 06-***, as may be amended,~~ or the valuation provided by a tree appraisal conducted by an arborist certified by the International Society of Arboriculture or landscape architect registered in the state of Florida and where the appraisal was conducted in accordance with the methodology contained in the Guide for Plant Appraisal, 9th edition, as amended and published by the International Society of Arboriculture.
 - d. Compensation for Specimen or Heritage Trees illegally removed or destroyed shall be three (3) times the calculated cost of C.
 - e. All compensation funds shall be deposited in the trust fund established by Section 62-4336 of this ~~Article~~Division.
- (4) Waivers
- a. When the NRMO Director or designee has determined that the site will not support the required trees and vegetative communities to be preserved as well as the required landscaping, an administrative waiver to tree planting requirements may be granted. It is the intent of this ~~article~~Division that preservation of native and Florida-friendly trees ~~and vegetation~~ shall take precedence over additional planting of trees and vegetation.
 - b. When the County Manager Director or ~~his/her~~ designee determines that a minor administrative adjustment to the applicable parking standards in nonresidential zoning classifications would allow for the preservation or additional planting of native or Florida-~~Friendly trees~~Landscaping on the site, upon a written request by the applicant, together with a vegetation survey, submitted with the required landscaping plan, the County Manager or designee may administratively waive up to thirty percent (30%) of the applicable parking standards for the property. Where the County Manager Director or ~~his/her~~ designee determines that additional preservation would occur if required parking reduction were granted, applicant must submit for parking reduction by up to thirty percent (30%) to allow preservation. The total parking spaces shall not be less than seventy percent (70%) of the parking as required by the Land Development regulations. If the parking requirements of any other section of this Code conflict with the landscaping requirements of this division, the conflict may be resolved administratively by the County Manager or designee.

SECTION 17. Sec. 62-4345. Appeals. is created as follows:

Sec. ~~tion 62-3645~~ 62-4345. Appeals ~~and~~ Variances.

*Proposed LLTP Task Force Ordinance
in Ordinance format with changes from the County Attorney's Office highlighted*

(1) — Any appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Article~~Division~~ shall be filed in accordance with the provisions set forth in Section ~~62-507~~ 62-301, Brevard County Code.

- (2) ~~Variances to the requirements of this Article may be granted by the Board of Adjustment only if all of the following criteria have been met by the applicant:~~
- a. ~~An application and fee has been filed by the applicant with NRMCO and;~~
 - b. ~~The application provides clear and convincing evidence that the applicant cannot comply with the requirements and process in Section 62-3644 due to unique site characteristics not commonly found on similar properties and;~~
 - c. ~~The unique site characteristics are not the result of the applicant's activities.~~

SECTION 18. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 19. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 20. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 21. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase.

SECTION 22. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

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in Ordinance format with changes from the County Attorney's Office highlighted*

ATTEST

Scott Ellis, Clerk

Reviewed for form and content by:

Christine Lepore
Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Helen Voltz, Chair
As approved by the Board of County Commissioners
on