

ORDINANCE 2021-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA AMENDING ARTICLE 37 OF THE LAND DEVELOPMENT CODE, NATURAL RESOURCE PROTECTION; SPECIFICALLY RESCINDING THE CURRENT SECTION 37.02, NATIVE CANOPY TREE PROTECTION, AND CREATING A NEW SECTION 37.02, UNINCORPORATED AMELIA ISLAND TREE PROTECTION AND REPLACEMENT, CREATING THE NASSAU COUNTY-AMELIA ISLAND TREE COMMISSION, CREATING THE AMELIA ISLAND TREE FUND, PROVIDING FOR THE AMELIA ISLAND TREE PLANTING PROGRAM, SETTING MINIMUM TREE PRESERVATION AND REPLACEMENT STANDARDS, DEFINING A SPECIMEN TREE; AMENDING ARTICLE 32 OF THE LAND DEVELOPMENT CODE, DEFINITIONS; PROVIDING FOR PENALTY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Nassau County adopted the Natural Resource Protection Ordinance, 2008-01, which included Section 37.02 of the Land Development Code (LDC), Native Canopy Tree Protection; and

WHEREAS, Nassau County adopted revisions to Section 37.02 LDC primarily focused on tree protection and preservation in 2013 via Ordinance 2013-06; and

WHEREAS, understanding the importance of analyzing the effectiveness of Ordinance 2013-06, the Planning and Zoning Board finds that additional amendments to Section 37.02 are necessary to adequately fulfill the intent of the regulations; and

WHEREAS, Amelia Island is a barrier island on the east coast of Florida that contains a maritime forest - one of the rarest coastal biological communities; and

WHEREAS, of the east coast barrier islands those islands within the Georgia Embayment, Amelia Island being one, have among the most vigorous maritime forest; and

WHEREAS, the Amelia Island maritime forest provides communal benefits that are integral to the health, safety and general wellbeing of the Island and the inhabitants thereon; and

WHEREAS, those communal benefits that preserve the health, safety and general wellbeing of the inhabitants of Amelia Island include, among others, storm protection, stormwater storage and treatment, soil stabilization and strengthening, and serve to counter heat island effect; and

WHEREAS, the communal benefits provided by a mature maritime forest cannot be replicated through new plantings in a reasonable timeframe; and

WHEREAS, the Planning and Zoning Board further recognizes that effective tree protection requires the coordination of other design standards such as landscaping, utility infrastructure placement, stormwater management and vehicle parking and thus amendments to other portions of the Land Development Code are necessary; and

WHEREAS, the Planning and Zoning Board created a working group with a directive to conduct fact finding to present information to the Nassau County Planning and Zoning Board; and

WHEREAS, the working group has held fact finding meetings and provided draft ordinances to the Planning and Zoning Board and staff; and

WHEREAS, the Nassau County Comprehensive Plan, Policy CS.02.01, states that the “County shall maintain or expand regulations in the Land Development Code that provide for tree protection standards on Amelia Island”; and

WHEREAS, the Planning and Zoning Board conducted a public hearing on this Ordinance on INSERT DATE and voted to recommend approval to the Board of County Commissioners and legal notice of this Ordinance has been provided in accordance with Sec. 125.66, F.S.

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

SECTION 1. FINDINGS

This Ordinance is consistent with the Nassau County Comprehensive Plan, in particular Policy CS.02.01.

SECTION 2. AMENDMENT

37.02 Unincorporated Amelia Island Tree Protection and Replacement

A. Purpose and Intent

The purpose of this section is to provide standards and regulations to ensure a minimum number of trees on any lot or parcel, protect and preserve native tree species, protect and preserve the natural landscape, foster and encourage maintenance of natural vegetation, and minimize loss of trees to development within the unincorporated areas of Amelia Island. It is the intent of the Board of County Commissioners of Nassau County that:

1. a balanced, equitable and practical approach to preserving the Amelia Island tree canopy and fostering the establishment of new trees on Amelia Island be implemented;
2. Amelia Island is a barrier island on the east coast of Florida that contains a maritime forest - one of the rarest coastal biological communities;
3. of the east coast barrier islands those islands within the Georgia Embayment, Amelia Island being one, have among the most vigorous maritime forest;
4. the Amelia Island maritime forest provides communal benefits that are integral to the health, safety and general wellbeing of the Island and the inhabitants thereon;
5. those communal benefits that preserve the health, safety and general wellbeing of the inhabitants of Amelia Island include, among others, storm protection, stormwater storage and treatment, soil stabilization and strengthening, and serve to counter heat island effect;
6. the communal benefits provided by a mature maritime forest cannot be replicated through new plantings in a reasonable timeframe;
7. preservation of the Amelia Island’s existing tree canopy is achieved by managing the impact of development and preventing unreasonable or unnecessary damage to the community’s existing native tree canopy and vegetative understory;
8. the diversity of tree species indigenous to Amelia Island shall be maintained;

9. existing mature growth native trees important to Amelia Island's tree canopy are protected and maintained to the fullest extent possible;
10. structures and all impervious surfaces will be placed in such a way as to protect the survivability and substantial growth of the healthiest canopy trees on the property;
11. the natural environment is preserved, enhanced, and restored through the protection and establishment of native trees and existing natural systems for the enjoyment of present and future populations;
12. achieving greater energy conservation by maximizing the shading and cooling effects of existing native, healthy trees and native replacement trees;
13. providing cooling comfort and beauty for public spaces such as parks, rights-of-way and areas adjacent to rights-of-way, sidewalks, and bicycle trails;
14. the unique aesthetic character of Amelia Island is preserved, enhanced, or restored; and
15. All properties located in the unincorporated areas of Amelia Island shall maintain compliance with this Article as outlined in 37.02(B) unless and until annexation into the City of Fernandina Beach is fully executed at which time any further development action is subject to rules and regulations of the City of Fernandina Beach.

B. Applicability

1. The terms and conditions of Section 37.02 shall apply to all lands in the unincorporated areas of Amelia Island.
2. Nothing herein shall exempt any property in the unincorporated areas of Amelia Island from or waive any landscaping, minimum tree planting, open space or buffer requirement described in Sections 37.03, 37.05 and/or 37.06 LDC unless explicitly expressed in this section.
3. Any tree protection plan approved by Nassau County prior to (insert effective date) remains in effect. Nothing herein shall be construed to invalidate a previously approved tree protection plan. However, Sections O, P, R, and S in this Article shall apply to tree protection plans approved by Nassau County prior to (insert effective date).

C. Regulatory Framework

The regulations set forth herein establish the following:

1. creation of an Nassau County-Amelia Island Tree Commission Amelia Island Tree Commission;
2. definition of a protected tree;
3. the permissible means by which a protected tree may be removed; and
4. a penalty for violation of this Article.

D. Nassau County-Amelia Island Tree Commission

1. There is hereby created an unincorporated Nassau County-Amelia Island Tree Commission (NC-AITC).
2. Appointments. The NC-AITC shall consist of five (5) members to be appointed by the Nassau County Board of County Commissioners. The NC-AITC shall, to the extent practicable, include:
 - a. Five (5) Voting Members:
 - i. County Planning and Zoning Board Representative, recommended by Planning and Zoning Board;
 - ii. a Florida licensed Landscape Architect;
 - iii. an International Society of Arboriculture (ISA) Certified County Arborist, either a County employee or contractor: and

- iv. Two lay citizens who must be residents of the unincorporated area of Amelia Island.
- b. Ex Officio Non-Voting Members will include:
 - i. a Planning Department Representative appointed by the County Manager;
 - ii. a Public Works Department Representative as appointed by the County Manager;
 - iii. a Engineering Services Department Representative as appointed by the County Manager: and
 - iv. a Institute of Food and Agricultural Sciences (UF-IFAS) representative approved by the County Manager.
- 3. Administration:
 - a. Terms. Voting members shall be appointed for three (3) year staggered terms. Any member appointed to the NC-AITC serves at the pleasure of the Board of County Commissioners.
 - b. Chair/Conduct of Business
 - i. The NC-AITC shall elect a chair and vice-chair each year. No person shall serve more than two (2) consecutive terms as chair or vice-chair.
 - ii. The NC-AITC shall meet, at a minimum, monthly at a regular date and time in accordance with Florida public meeting laws.
 - iii. Meetings shall be held in accordance with Robert's Rules of Order "simplified."
 - iv. The NC-AITC is staffed by the Planning Department and represented by the County Attorney.
- 4. Powers and Duties. The NC-AITC responsibilities are as follows:
 - a. develop, recommend and forward to the Board of County Commissioners a tree planting program as outlined in section M to be updated at a minimum every five (5) years, with recommendation first being reviewed by the County Manager and Office of Management and Budget Director to determine a financial impact, with the financial impact and recommendation presented to the Board of County Commissioners by the County Manager;
 - b. review restoration plans as outlined in section U;
 - c. hear and decide administrative appeals from provisions of this Ordinance as outlined in section P;
 - d. the NC-AITC may recommend to the Board of County Commissioners that:
 - i. periodic surveys of trees and vegetation on the unincorporated area of Amelia Island be conducted;
 - ii. a survey and record of significant trees be established and maintained;
 - iii. new canopy roads be designated; and
 - iv. a Heritage Tree program be established.
 - e. The above powers and duties, excepting Section 32.02.D.4.b and Section 32.02.D.c, are subject to the availability of funds as determined by the Board of County Commissioners. In determining such funding availability, the Office of Management and Budget shall provide to the Board a financial impact report.

E. Protected Trees

- 1. A Protected Tree is any existing, healthy tree as determined by an ISA certified arborist approved by the Board of County Commissioners having a caliper of five (5) inch Diameter at Breast Height (DBH) or greater, and not identified on the most recent Florida Exotic Pest Plant Council Invasive Plant list (Category I or II).

2. Specimen Trees: Healthy *Quercus virginiana* and *Quercus geminata* (live oak) are integral to the health of a maritime forest and by extension, the health and well-being of Amelia Island. In addition, the live oak is the primary characteristic of Amelia Island's unique aesthetic quality which is critical to economic prosperity of the local tourist industry. Specimen Trees are any existing healthy live oak as determined by an ISA-certified arborist approved by the Board of County Commissioners, measuring forty (40) inches or more in diameter at breast height, or, a multi-trunk live oak, as determined by an ISA-certified arborist with an aggregate measurement of sixty (60) inches or more in diameter at breast height. The following standards apply to specimen trees.
- a. The exemptions and waivers defined in this Article do not apply to specimen trees.
 - b. Specimen tree removal shall require a permit from the Planning Department.
 - c. Permit requests for specimen tree removal shall include a written report prepared, signed and notarized by an ISA certified arborist. The report, at a minimum, shall include:
 - i. a response to the review criteria for specimen tree removal, and;
 - ii. reports, references and any other supporting documentation necessary to demonstrate the specimen tree meets the criteria for removal, and;
 - iii. a tree replacement plan meeting the minimum requirements of this Ordinance.
 - d. The permit request will be considered by the NC-AITC at a public hearing. The NC-AITC shall consider the following in their review of the request to remove a specimen. Criteria for specimen tree removal are as follows:
 - i. the tree is dead or has fallen, as determined by an ISA-certified arborist, or;
 - ii. the health and/or structure is sufficiently compromised, and the tree is deemed to have a high likelihood of failure by an ISA-certified arborist with tree risk assessment credentials, or;
 - iii. the application of this Ordinance will remove all economically viable use of the property under review; or
 - iv. the applicant/property owner has demonstrated that no feasible design or development alternative exists that can be implemented that would allow preservation of the specimen tree(s). Such design alternatives would include use of customized architecture (building plans), incorporation of tree(s) into building complex, decrease in building footprint size, boring under tree roots instead of trenching (for utility installation), reduction in impervious surfaces, lesser intense use of the property, relocation or redesign of supporting infrastructure and utilities, and other similar design and development alternatives or;
 - e. The tree replacement standards associated with the removal of a specimen tree is in addition to all other tree replacement, tree planting and landscaping requirements defined in the LDC.
 - f. In addition to any other landscape requirement defined in Section 37.05 LDC or tree replacement requirements defined in this Article, the removal of a specimen tree, based on the above review criteria, shall be mitigated by planting one three (3) inch caliper live oak on-site.
 - g. The Board of County Commissioners may set specimen tree removal permit fees by separate resolution.
 - h. Appeals and Waivers are set forth in Sections P and Q of this Article.

F. Tree Removal

Tree removal permits, processed through the Planning Department, are required for the removal of any protected tree, except as outlined in Section 32.02.F.1.a below. The Board of County Commissioners may adopt tree removal permit fees by separate resolution. The removal of a tree by any person or entity who fails to meet the standards/procedures in this section will be subject to the penalty and enforcement provisions defined in this Article.

1. Trees Exempt from Protection: Permitting and/or replacement exemptions are outlined below. In the event the removal of a tree(s) in accordance with this section causes the property to fall beneath the minimum required number of trees per Section 37.05 and/or 37.06 LDC additional trees shall be planted in accordance with the minimum tree planting standards defined in the referenced sections of the LDC. Nassau County shall require a tree replacement plan be created at the owner's expense.
 - a. Exempt Classification 1: The following categories are exempt from permit, permit fee and replacement requirements:
 - i. pruning, trimming or removal of trees on residential property that present a danger to persons or property, as determined by documentation from an ISA-certified arborist or a Florida licensed landscape architect. Replanting of a removed tree under this provision is not required. Pruning and trimming shall be performed in compliance with the best practices as provided by the ISA. This provision does not apply to action undertaken by the Public Works Department for work in a public right-of-way related to public health and safety matters.
 - ii. Trees and landscaping specifically grown as landscape material for resale by duly approved and licensed plant nurseries and botanical gardens.
 - iii. Storm-Damaged or hazardous trees during and for a one (1) month period following a declared weather state of emergency. Declared weather state of emergency shall include all State, Federal and Local declarations that include Amelia Island.
 - iv. Minor maintenance activities such as removal of sucker growth, water sprouts, and overhanging branches on mature trees. All work shall be performed in compliance with the best practices as provided by the ISA.
 - v. Trimming or removal of trees or limbs by Nassau County or County contractors located within a public right of way that has been deemed to represent a clear and immediate threat to the health and wellbeing of the general public as determined by the County Engineer.
 - vi. Major and minor maintenance of trees located adjacent to utility lines when performed by the utility provider.
 - vii. Fallen trees.
 - b. Exempt Classification 2: The following require a tree removal permit and documentation in the form of a notarized letter by an ISA-certified arborist at the property owner's expense as part of the permit application, but replacement plans and replacement and tree removal permit fees shall be waived for this category:
 - i. nonresidential protected trees damaged by disease, fire, windstorm, lightning, insect infestation or other acts of nature, which pose an imminent danger to life, property or other protected trees;
 - ii. removal of trees (thinning) within a forested area in order to reduce overcrowding and competition and to promote the health, growth, and resistance to stress may be permitted;

- iii. removal of trees by Nassau County within Nassau County rights-of-way except as exempted in Section 37.02.F.1.a.v; and
 - iv. removal for emergency purposes outside the provision found in Section 37.02.F.1.a.iii wherein the tree poses an imminent threat to the health, safety and welfare of persons or public or private property (not applicable to circumstances outlined in Section F.1.a.i above).
- 2. Protected Trees Removed as Part of New Development:
 - a. The term *Construction Zone*, as used in this Article and found in Article 32, shall have the following meaning: The impervious, semi-impervious area of development including related infrastructure, utilities, stormwater management facilities and the lands within six (6) feet thereof.
 - b. The term Limits of Disturbance, as used in this Article and found in Article 32 LDC shall have the following meaning: A boundary denoting the maximum extent of any development activity. Development activity includes, but is not limited to, storage of material or equipment, access roads, haul roads, excavation, grading, deposit of fill material or aggregate, site work, erection of a structure, placement of construction trailers, placement of dumpsters, installation of utilities, operation of heavy equipment, or any other development related activity. Areas outside the Limits of Disturbance are not to be impacted by development activity.
 - c. The term *New Development*, as used in this Article and found in Article 32, shall have the following meaning: Any new construction or site work whether residential, non-residential or mixed-use, any modification, expansion, redevelopment or alteration to an existing structure, alteration to any site including borrow pit construction, site grading, driveways or other similar activity, any new or expanded accessory use or structure – shed, pool, parking area, means of ingress/egress, drainage facility, pond, etc., and/or any other aspect of site or structural development or modification that may adversely impact existing trees.
 - d. As part of new development, a protected tree may be removed subject to the following removal requirements:

Type of Development:	Removal requirements:
Individual one- and two-family residential lots/building sites	<p>Replacement of twenty-five percent (25%) of the total caliper inches of the protected trees located within the Construction Zone and Limits of Disturbance shall be required.</p> <p>Protected trees located outside the Construction Zone and Limits of Disturbance shall not be removed except as in conformance with Section 37.02.E. of this Article. No exemption for replacement inches shall be given for the removal of protected trees located outside the Construction Zone and Limits of Disturbance. See example In Figure 37.1.</p> <p>Specimen Trees: Notwithstanding the above, in no case shall a specimen tree be removed except as in accordance with Section 37.02.E.2. of this Article.</p> <p>Pruning, trimming or removal of trees on residential property that present a danger to persons or property, as determined by documentation from an ISA-certified arborist or a Florida licensed landscape architect. Replanting of a removed tree under this provision is not required.</p>

<p>New residential subdivisions</p>	<p>Replacement of twenty-five percent (25%) of the total caliper inches of the protected trees located within the Construction Zone and Limits of Disturbance shall be required. The Construction Zone and Limits of Disturbance includes proposed new rights-of-ways/streets/alleys, club houses or amenity centers or, within any active recreation areas, utility areas, golf courses, storm water management facilities or other similar components of development outside individual lots shall be exempt from replacement.</p> <p>Protected trees located outside the Construction Zone and Limits of Disturbance shall not be removed except as in conformance with Section 37.02.E. of this Article. No exemption for replacement inches shall be given for the removal of protected trees located outside of the above referenced Construction Zone and Limits of Disturbance, including in commonly held open space, vegetative natural buffers, uncomplimentary use buffers, upland buffers (wetland buffers), or passive recreation areas. Individual lots will be reviewed independently for preservation and, if needed, mitigation at the time a development permit is requested for the individual lot.</p> <p>To provide for improved habitat, trees shall be preserved in groves and groupings, when possible.</p> <p>Specimen Trees: a specimen tree shall not be removed except as in accordance with Section 37.02.E.2 of this Article.</p>
<p>Multi-family residential, Non-Residential and Mixed-Use</p>	<p>Replacement of twenty-five percent (25%) of the total caliper inches of the protected trees located within the Construction Zone, including stormwater management and utility areas, and within the Limits of Disturbance shall be exempt from replacement.</p> <p>Protected trees located outside the Construction Zone and Limits of Disturbance shall not be removed except as in conformance with Section 37.02.E. of this Article. No exemption for required replacement inches shall be given for the removal of protected trees located outside of the above referenced improvements, in commonly held open space, vegetative natural buffers, upland buffers (wetland buffers), uncomplimentary use buffers, or passive recreation areas.</p> <p>To provide for improved habitat, trees shall be preserved in groves and groupings, when possible.</p> <p>Specimen Trees: a specimen tree shall not be removed except as in conformance with Section 37.02.E.2 of this Article.</p>

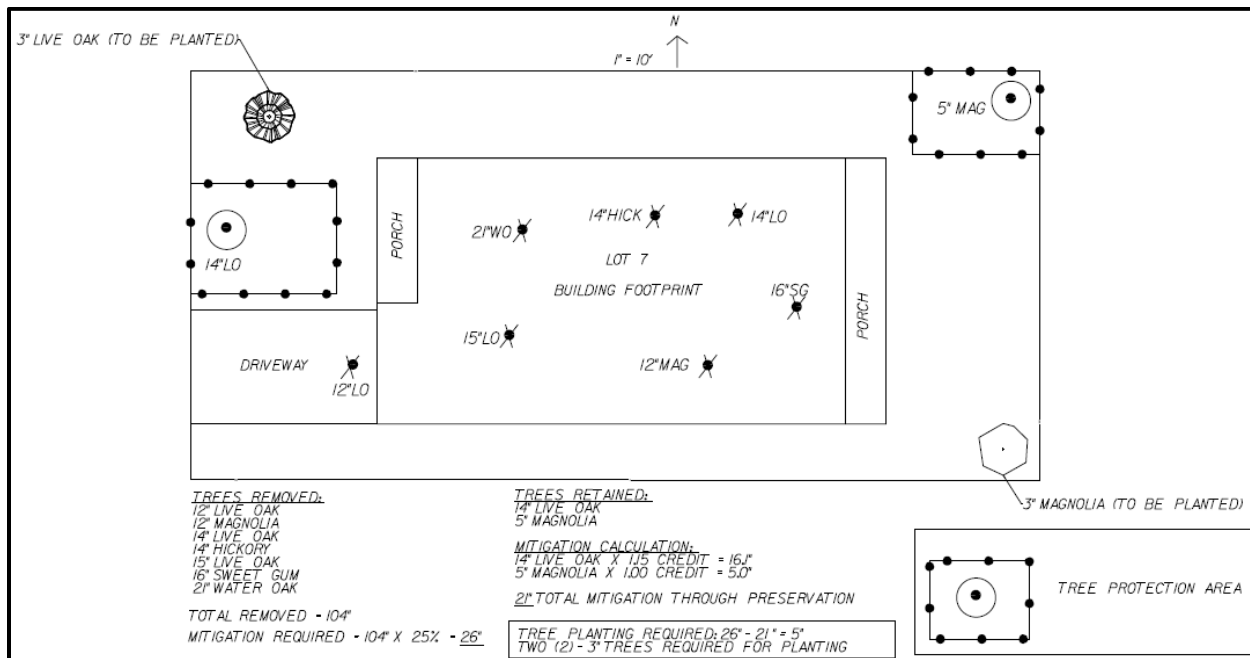


Figure 37-1: Tree Mitigation Example

3. No protected tree located within a required perimeter landscape area, as defined in Section 37.05.D., adjacent to a public or private right-of-way or street shall be removed except to provide site access where no other viable option exists. Any tree meeting this requirement shall be identified as part of the tree protection and replacement plan and be assessed for health by an ISA-certified arborist.
4. It is encouraged that as part of the development program the naturally occurring groundcover and understory be maintained. However, the removal of underbrush and removal of trees which are less than five (5) inches DBH is allowed. Removal of underbrush within a Tree Protection Zone shall be consistent with the methodologies defined in this Article.
5. Credit shall not be given for the preservation of protected trees located in jurisdictional wetlands or required upland buffers/vegetative natural buffers.
6. When, based on the determination of an ISA-certified arborist, a parcel of land cannot support the number of trees required to be planted as part of the replacement standards as defined herein, a property owner, at their expense, may plant the requisite trees on other lands on Amelia Island subject to approval by the NC-AITC. The receiving entity shall be responsible for the tree(s) survival. If any replacement tree does not survive it shall be the responsibility of receiving entity to replace the tree(s).
7. It is encouraged, and in some cases may be required, to utilize low impact development principles, or other techniques such as stem-wall construction, tree wells and others, in order to preserve protected trees.
8. For the health of existing and new trees, proposed fill for green space in new developments shall be limited to the minimum amount necessary to provide positive drainage flow and to abide by any applicable floodplain protection and/or state and local regulations. Native soil shall be stockpiled and re-spread during final site grading. Any imported topsoil required shall be similar to the existing soil in pH, texture, permeability, and other characteristics.

G. Required Documentation for Tree Removal Related to New Development

1. Class I Development:
 - a. When considering a request to facilitate New Development that does not require review by the Development Review Committee (DRC), the tree protection and replacement plan shall be submitted at the time the request is made. As an example, the addition of a pool to an existing single-family residential lot does not require approval by the DRC; however, the improvement meets the definition of New Development per this Article and thus requires a tree protection and replacement plan and is subject to the 75/25 replacement rule as defined in Section 37.02.F.2 of this Article. The Planning Department will review said protection and replacement plan and either approve, approve with conditions or deny for-cause the submitted plan based on the standards defined in Sections 37.02.G, H, I, J, K N and O of this Article. The Planning Department will provide a written assessment of the plan notifying the applicant of the review findings if approved with conditions or is denied. No development permit (this includes building permits, site work permits, borrow pit permits, right-of-way permit, driveway permits, or any similar permit) will be issued until the tree protection and replacement plan is approved by the Planning Department. A review fee will be set by separate Resolution of the Board of County Commissioners and amended from time-to-time as necessary.
2. Class II, III, and IV Development:
 - a. When reviewing a project requiring a Preliminary Binding Site Plan, Site Plan, or Subdivision Plan reviewed by the Development Review Committee, the tree protection and replacement plan shall be required as part of the review and be included within Preliminary Binding Site Plan, Site Plan, or Subdivision Plan documents.
 - b. When reviewing a project requiring a Site Engineering Plan (SEP) reviewed by the Development Review Committee, but not any of the items listed in 'a' above, the tree protection and replacement plan shall be required as part of the review included within Site Engineering Plan documents.
 - c. When reviewing a project requiring a Preliminary Development Plan (PDP, new or modified) the tree protection and replacement plan shall be required as part of the review included within Preliminary Development Plan documents.
 - d. When reviewing a project requiring a Final Development Plan (FDP) that has a previously approved Preliminary Development Plan the tree protection and replacement plan shall be required as part of the review included within Final Development Plan documents.
 - e. All revision sheets must be dated and revision history noted in the title block.
3. The following information is required for all tree protection and replacement plans:
 - a. A completed tree inventory. This includes a graphical representation and worksheet in an application provided by the Planning Department.
 - b. A tree survey/inventory. When the request involves removal of three (3) or fewer trees, the inventory/survey does not need to be certified by an ISA-certified arborist, but must contain all requisite information defined in this Article. When the application is requesting the removal of four (4) or more trees, the inventory/survey shall be certified by an ISA-certified arborist. The Planning Department shall make this determination.
 - c. In all cases, the tree survey/inventory shall be drawn to scale and include the following;
 - i. Location of all trees, identifying their species using botanical species nomenclature (i.e. *Quercus virginiana* = Qv), size at DBH, tree protection zones

- and related barricades. The placement of tree barricades shall be in accordance with Section 37.02.N.5.c and shall be field adjusted and verified for compliance.
- ii. Illustration and text outlining tree protection methods as per Sec. 37.02.N.
 - iii. All protected trees, including specimen trees, within the project boundary, abutting rights-of-way and easements shall be noted.
 - iv. Location, including footprint, of all proposed and existing structures and other existing and planned improvements including utilities and storm water management facilities.
 - v. All existing and proposed impervious and semi-impervious surfaces.
 - vi. Construction Zone Boundary.
 - vii. The Limits of Disturbance.
 - viii. Property boundaries and any abutting streets identified by name.
 - ix. Location of all points of ingress and egress, existing and planned utilities including private well and onsite sewage treatment and disposal systems (septic tank and drain field). If overhead utilities are located adjacent to the subject property, the location of said utilities must be shown.
 - x. Indication of trees to be retained, trees to be removed, and diseased trees. Include this information on a chart identifying all existing protected trees by #, DBH size, health, retention status, whether the tree is inside or outside the Construction Zone or Limits of Disturbance, comments and any other information deemed necessary to calculate preservation inches and mitigation inches required.
 - xi. Calculation of total DBH of trees inside the Construction Zone, 25% retention DBH, those within the Limits of Disturbance (if appropriate) and Mitigation Inches required.
 - xii. Proposed grade changes.
 - xiii. Jurisdictional wetland and related vegetative natural buffers (upland buffers) boundaries. Showing the location of protected trees in these areas is not required.
 - xiv. Supporting documentation from ISA-certified arborist related to encroachments into the tree protection zone detailing mitigation strategies to address development impacts to protected trees as referenced in Section 37.02.N.5.b.
 - xv. No survey or tree inventory shall be more than two (2) years old.
4. Nassau County reserves the right to have a third-party arborist review any request for tree removal. The cost of the review by the arborist shall be the responsibility of the applicant and paid prior to the approval of a permit.
 5. Unless exempted in subsections 37.02.F.1.a or b of this Article, a tree replacement plan shall be submitted and certified by an ISA-certified arborist or licensed landscape architect showing the location and specification of all replacement trees pursuant to and consistent with the tree replacement and relocation standards in Section 37.02.E.
 6. All tree protection and replacement plans requiring certification by an ISA-certified arborist and all restoration plans shall include the following notarized signature block.
I, _____, am a certified arborist through the International Society of Arboriculture and my certification number is _____. I hereby attest that I have prepared this tree protection and replacement plan and/or restoration plan. This includes not only the evaluation of individual trees but also review of the complete construction plan set and the techniques that will be utilized to mitigate impacts to protected trees. Further, I attest

that best practices, as supported by the International Society of Arboriculture, are being implemented to avoid and mitigate impacts to protected trees.

Print Name: _____

Signature: _____

Date: _____

7. Tree Preservation Plan or Restoration Plan shall be re-signed by the arborist with any Tree Preservation Plan or Restoration Plan resubmission.

H. Supplemental Parking Requirements For the Unincorporated Areas of Amelia Island

Supplemental parking requirements for Amelia Island were adopted to promote tree preservation. See Section 31.14 of the LDC: Supplemental Parking Requirements for the Unincorporated Areas of Amelia Island.

I. Replacement Trees Requirements

1. When authorization has been granted to remove protected trees, replacement trees shall be planted as applicable. The combined caliper inches of replacement and preserved trees shall at a minimum equal the combined DBH of trees authorized for removal subject to any applicable partial exemption defined in Section 37.02.F.2 and tree preservation credit as defined in Section 37.02.K.
2. For specimen trees, see Section 37.02.E.2 of this Article. The approved removal of specimen tree shall be mitigated with the planting of one three (3) caliper inch live oak. Tree preservation credits nor landscape requirements as defined in Section 37.05 LDC may be utilized to off-set this requirement. This requirement is in addition to all other landscaping, tree planting and replacement requirements. Preservation credits are not applicable for removal of Specimen Trees to ensure that for each specimen live oak which is removed, one live oak is planted.
3. Replacement trees shall be a canopy tree and meet the standards set forth in Section 37.05.B LDC and shall measure three (3) caliper inches or more at the time of planting, be balled and/or burlapped or container-grown. In order to prevent a monoculture, replacement trees shall not include more than forty (40) percent of any one genus or twenty (20) percent of any one species.
4. Replacement trees can include relocated trees from within the site, with the approval of an arborist and also on-site supervision of the relocation by an arborist.
5. Replacement trees shall be maintained and warranted to survive for a period of one (1) year from installation. Trees which do not survive in good condition as determined by an ISA-certified arborist for one (1) year must be replaced with new trees meeting the size requirements defined herein at the property owner's expense. Replacement trees shall comply with the same maintenance and replacement warranty as the original replacement tree(s) and the warranty period will restart at the date of planting.
6. All replacement trees shall be irrigated.

J. Nassau County Tree Fund/Fee In-lieu

1. The Board of County Commissioners shall create a restricted unincorporated Amelia Island Tree Fund. The fee schedule will be set by the Board of County Commissioners. The fee amount will be based on the following:

The Planning Department will survey at least three retail nurseries located in Northeast Florida, with at least one nursery being located in Nassau County, to obtain the cost to plant

- a three (3) caliper inch live oak. The three quotes will be averaged to arrive at total cost. The total cost will be divided by three to derive the cost per inch replacement fee.
2. The following criteria shall be provided to the nurseries for arriving at a quote:
 - a. Transport and installation: Shall include transport and installation. For calculating travel distance for delivery, it will be assumed the tree will be planted at the intersection of Fletcher Avenue and First Coast Highway - a centralized location on Amelia Island.
 - b. Warranty: The Quote shall include a twelve (12) month warranty.
 - c. Irrigation: The cost to provide a tree watering bag and fill/maintain said gator bag as necessary for a period of not less than six months.
 - d. Material Grade: Grade #1 or better according to the current edition of "Grades and Standards for Nursery plants" published by the Florida Department of Agriculture and Consumer Services, Division of Plant Industry.
 3. The fee will be adjusted from time-to-time as deemed necessary by Nassau County Board of County Commissioners.
 4. The expenditure of monies collected by the Nassau County Tree Fund are limited for the following purposes within the unincorporated areas of Amelia Island and shall be expended by the Board of County Commissioners based on recommendations from the NC-AITC:
 - a. planting of new trees in the unincorporated areas of Amelia Island either on public lands or on private property in accordance with the Amelia Tree Planting Program in Section 37.02.M;
 - b. performing studies related to urban forestry, canopy protection, and assessments of natural areas;
 - c. education and outreach initiatives primarily focused on preserving the native canopy, impacts of tree loss, value of natural, regenerating areas; and
 - d. The development of grant applications.
 5. An applicant shall be permitted to pay a fee to the unincorporated Nassau County Tree Fund for up to fifty (50) percent of the required replacement inches (caliper).
 6. Payment into the Nassau County Tree Fund shall only be acceptable for tree replacement requirements and shall not be utilized to off-set any minimum landscaping requirements defined in Article 37.05 LDC.
 7. Penalty and Fine Money Collected as Part of Enforcement Action: Any financial penalties or fines collected by Nassau County related to violation of this Article shall be placed in the unincorporated Amelia Island Tree Fund for use as defined in subsection J.4.

K. Preservation Credits

1. All new development as defined in this ordinance is eligible to receive tree preservation credits.
2. On-site retention of protected trees shall receive the benefit of tree preservation credits to reduce the overall tree replacement requirements as follows:
 - Trees equaling 12" – 24" (DBH) shall receive a 115% credit
 - Trees equaling 24.1" – 38" (DBH) shall receive a 125% credit
 - Trees equaling 38.1" or greater (DBH) shall receive a 150% credit
- a. In order to qualify for on-site tree preservation credits, each tree proposed for retention must be evaluated by an ISA-certified arborist to ensure that the tree is healthy and proper mitigation techniques will be implemented to ensure the long-term viability of the tree(s) in the post development environment.

- b. These credits shall only be applied towards tree replacement requirements created by the removal of protected trees as set forth in Section 37.02.F. These credits may be transferred only on unified multiple lot developments pursuant to Sections 37.02.L.
 - c. Preservation credits for the total DBH of protected trees retained on the site will be applied during the review of the tree protection and replacement plan.
 - d. Tree credits cannot be applied to minimum landscaping requirements defined in Section 37.05 of the LDC.
 - e. Trees which provide for enhanced public shade for sidewalks, streets, parks, and other public space shall receive a 115% credit for each tree.
3. Existing Trees located within easements may be eligible to receive preservation credits provided the improvements within the easement do not adversely impact the protected trees. In addition, the easement holder shall provide written acknowledgement of the protected status of the trees and affirm activities within the easement will not adversely impact long-term survivability. For example, a tree located in an electrical utility easement that contains or will contain overhead electrical lines will not be eligible to receive credits. In the alternative, where a tree is located in an electrical easement where the electrical lines will be installed via directional bore (installed underground) under the consultation of an ISA-certified arborist then preservation credits are appropriate if correspondence is received from the easement holder acknowledging the trees protected status and affirms that activity in the easement will not adversely impact the trees survivability.

L. Tree Bank Exchange Area

A Tree Bank Exchange Area (TBEA) may be established in order to meet minimum replacement requirements related to New Development. The purpose of the bank is to prevent over planting on individual lots/tracts, to establish new shade trees in proximity to the removal location, and to provide flexibility and incentives for open space preservation. A Tree Bank Exchange Area (TBEA) is an area or several areas of land located internal to a development under unified development program which are dedicated as open space for new tree plantings. The use of a TBEA allows for trees to be planted within the identified area to satisfy required replacement inches necessitated by the removal of trees for New Development. The TBEA cannot be used to fulfill minimum landscape requirements for an individual site as defined in Section 37.05 and 37.06 LDC. A TBEA may be established at the same time as consideration of a preliminary binding site plan/subdivision plan, site engineering plan, preliminary development plan or by the Development Review Committee thereafter.

A TBEA must meet the following minimum standards and limitations.

- a. A TBEA shall be designated on the Site Engineering Plan and Plat or other similar means approved by the Development Review Committee.
- b. Provide a note in the adoption and dedication block on the plat defining to whom the bank is dedicated and the intended purpose, or in the alternative, provide adequate documentation to the Development Review Committee to meet the same intent.
- c. A TBEA shall be described in the covenants and restrictions of the community/development and define maintenance responsibility.
- d. A TBEA may only serve to receive trees from lands within the same development which is subject to a unified development program.
- e. Replacement trees shall only be allowed to be transferred to the TBEA. Replacement trees cannot be transferred from an individual lot to another individual lot unless otherwise approved by the Planning and Zoning Board.

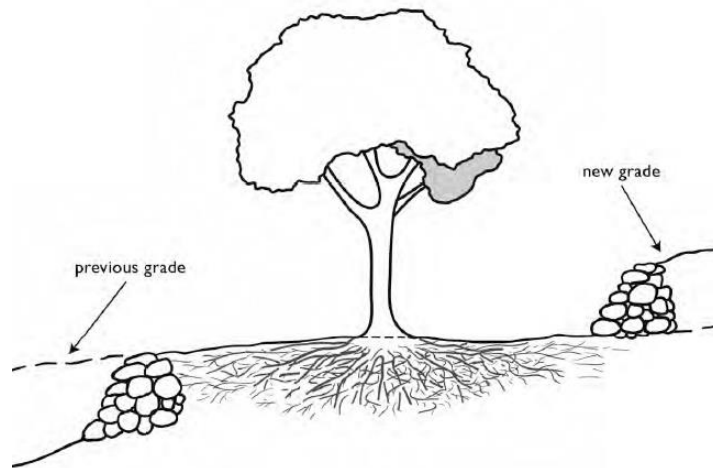
M. Nassau County Tree Planting Program

1. The NC-AITC may recommend to the Board of County Commissioners an unincorporated Nassau County Amelia Island Tree Planting Program. If approved, the program shall be evaluated and updated at a minimum every five (5) years. Any recommendation as to a tree planting program shall have a financial impact assessment approved by the County Office of Management and Budget and County Manager and provided to the Board of County Commissioners.
2. At a minimum, the Tree Planting Program shall include, but is not limited to:
 - a. as a priority, strategies for planting trees on publicly-held lands on the unincorporated area of Amelia Island, including rights-of-ways and lands owned or controlled by Nassau County and the Nassau County School Board; and
 - b. strategies for working with private property owners to plant trees on the unincorporated area of Amelia Island, including the possibility of partnerships using funds from the Nassau County Tree Fund.
3. Strategies for public and private planting programs must be developed in public meetings of the NC-AITC, establish a process, and have clear criteria for site selection and the use of funds. It is not intended that this program would offset any required landscape or tree replacement obligations of private property owners due to tree removal.

N. Protection of Trees During Development Activities

1. Protective measures are required during site development in order to assure the health and survival of protected trees. Storage of construction materials or fill dirt is expressly prohibited within the tree protection zone.
Protective measures are required to avoid mechanical injuries to roots, trunk, and branches, injuries by chemical poisoning, grade changes, excavations, root compression, and new impervious surfaces.
2. To provide conformity between projects, avoid confusion and assist field inspectors, enforcement agents, site construction works and others, the following color-coding system for tree ribbons and in the creation of tree protection and replacement plans shall be used.
 - a. Pink "Do Not Cut" Protected Tree to be preserved
 - b. White – Used for Tree Survey Purposes Only
3. It is the intent of this article to encourage the utilization of Low Impact Development principles. Significant grade changes should be avoided to the maximum extent possible. Stem-wall construction is strongly encouraged. When grade change is unavoidable, techniques shall be used to avoid placement of fill over the tree protection zone. It is encouraged that as part of the development program the naturally occurring groundcover and understory be maintained.

GRADE CHANGE GUIDELINES



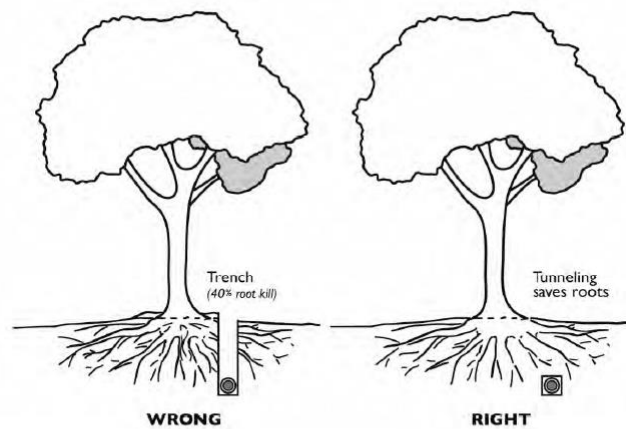
MAINTAIN EXISTING GRADE AROUND TREE

Protect tree roots by creating terraces with retaining walls. This will allow the original grade around the root zone to be maintained. Cutting or shaving roots or piling soil on top of roots to create a continuous new grade will slowly kill the tree. Look out for drainage changes that could mean a tree gets too much water or not enough.

Figure_37-2: Maintain Existing Grade

4. The extension of utilities shall be underground and utilize directional boring (tunneling) and avoid protected trees. Utility areas shall be denoted on all tree protection plans/site plans.

TUNNELING UNDER ROOT ZONE



AVOID SEVERING ROOTS

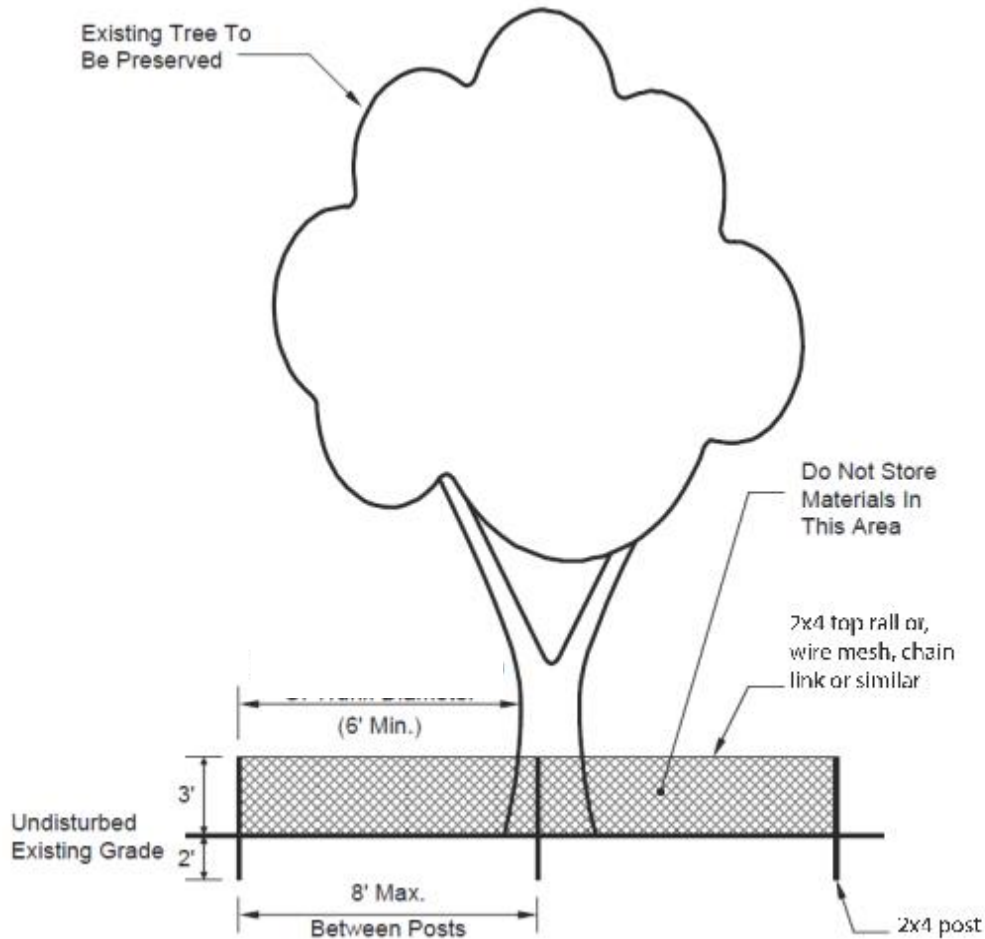
Install utility lines around tree roots or tunnel under the root zone. Trenching kills all the roots outside the trench line. Posts and supporting beams can be substituted for footing and walls where proposed foundations conflict with tree roots.

Figure__37-3 – Proper Utility Line Installation

5. A tree protection zone shall be established around each protected tree(s) as follows
 - a. At a minimum, the tree protection zone (TPZ) shall be defined as a circular area around a protected tree with a radius equal to six (6) times the diameter of the trunk of the protected tree at breast height. In no case shall a tree protection zone be less than seventy-two (72) inches. As an example, a protected tree with a DBH of fifty (50) inches will have a tree protection zone with a radius of three-hundred (300) inches. A protected tree with a DBH of eight (8) inches will have a tree protection zone of seventy-two (72) inches. Reference Section 37.02.N.5.b for deviations in TPZ encroachments.
 - b. Encroachment into the TPZ is allowed only with the written findings from an ISA-certified arborist that such encroachment shall not harm the health of the tree. These findings shall be independently verified by the County's arborist.
 - c. Prior to commencement of construction, all trees shall be marked with the appropriate color ribbon as defined in Section 37.02.N.2 and the tree protection zone shall be enclosed via the installation of the tree protection barricade. The tree protection barricade shall be at least three (3) feet tall, shall include 2X4 vertical supportive posts placed at a maximum of eight (8) feet apart, and shall include a 2X4 top rail. Allowable fence types include wood picket, temporary wire mesh, or other barrier that effectively limits access to the protected area. The barricade must be soundly constructed and remain in place through the duration of construction activities.
 - i. On-site placement of posts for the barricades shall be shown on the DRC approved site plan as approved by an ISA-certified arborist protect the health of the tree(s).
 - ii. The material utilized for the barricade may be altered by the Planning and Zoning Board upon receipt of a written request of the Applicant. The decision to grant the alternative material shall be based on the following:
 - a) Peculiar topographical or environmental characteristics of the site that are not applicable to other lands.
 - b) The proposed alternative is superior to minimum requirements as determined by an ISA-certified arborist.
 - c) Financial impacts on the Applicant shall not be considered by the Board in making a determination.
 - d. Trenching or excavation within the tree protection zone of a tree intended for preservation must be done by directional boring/tunneling.
 - e. A deviation from the minimum size requirements of the tree protection zone may be granted by the NC-AITC if the strict application of this rule will result in the unnecessary destruction of protected trees which can otherwise be preserved through application of best management practices. Consultation with an ISA-certified arborist is required to determine proper mitigation measures to ensure protection of the tree during construction activities. The plan shall be prepared and certified by an ISA-certified arborist and include sufficient detail to clearly define the process and protective measures proposed. This plan shall be submitted to Planning Department as part of the request to commence New Development. The County reserves the right to impose upon the applicant the minimum fee necessary to cover the expense of having a third-party ISA-certified arborist review the submittal.
 - f. If upon inspection by the Code Enforcement Department it is determined that a tree protection barricade has not been properly maintained or improperly located a stop

work order may be issued. The stop work order may not be lifted until all barricades have been re-established in accordance with this ordinance, verified by an ISA-certified arborist and any resulting corrective action has been completed.

- g. During construction it shall be the responsibility of the developer to monitor the water needs of protected trees.
- h. A 12 square foot sign shall be displayed in the TPZ marking the TPZ.



Figure__37-4__

- 6. All development activities, except those specifically permitted by Section 37.02.N.7, shall be prohibited within the tree protection zone, including any construction of buildings, structures, paving surfaces, stormwater retention or detention ponds, and temporary construction activities, including all digging, storage of construction material, mechanical clearing of underbrush and/or parking of construction vehicles.
- 7. Permitted activities within the tree protection zone:
 - a. Excavating by utility service providers for installation of underground utilities. Underground utilities shall be placed away from the base of the tree to the maximum extent possible. When trenching or excavation within the tree protection zone of a tree intended for preservation is deemed necessary by the County Engineer all trenching and excavating shall be done by directional boring/tunneling. The County Engineer shall not consider the financial implications of boring/tunneling in making a determination.

- b. Placement of ground covers such as mulch, pine straw, pine bark, or naturally occurring groundcovers found in the same natural community, and the non-mechanical preparation of the ground surface for such covers.
 - c. Hand trimming of underbrush.
- 8. The root systems of protected trees shall be preserved when installing fences and walls. Postholes and trenches located close to trees shall be dug and adjusted as necessary to avoid damage to major roots. Continuous footers for masonry walls shall be ended at the point larger roots are encountered and the roots bridged.
- 9. No person shall attach any signs to a protected tree, nor shall any person cause any substance harmful to protected trees to come in contact with them, or prevent water or oxygen from reaching their roots by excessive cut and fill activities.
- 10. The Planning Director reserves the right to have a third-party arborist review any submitted permit and/or back-up data and make site visits as deemed necessary by the third-party arborist. The cost of the third-party review will be passed to the applicant.

O. Abused Trees

Abused trees shall not be counted toward fulfilling tree replacement or preservation requirements. Nassau County may require the abused trees to be replaced and are subject to penalties provided for in this Article. A tree may be considered abused if one (1) or more the following actions have taken place.

- 1. Damage that threatens the long-term survivability, as determined by an ISA-certified arborist, has been inflicted upon any part of a tree, including the root system by machinery, storage of materials, soil compaction, excavation, vehicle accidents, chemical application, or change to the natural grade.
- 2. Damage inflicted to or cutting upon a tree which causes infection or pest infestation.
- 3. Pruning any tree to permanently reduce the function of the tree or cause it to go into shock.
- 4. Hat-racking/Topping.
- 5. Pruning more than 30% of the canopy of a shade tree.
- 6. Removal of bark which is detrimental to the tree.
- 7. Tears and splitting of limb ends or peeling and stripping of bark.
- 8. Use of climbing spikes, or cutting into the tree for the purposes of climbing on any species of tree for any purpose other than total removal, except as the same may be required to comply with federal, state or local laws and regulations, including, but not limited to, the Occupational Safety and Health Act.
- 9. Girdling a tree with the use of wires (e.g., use of weed eater, mower damage, or improper cabling around branches).

P. Appeals

- 1. It is the intent of this article that all questions of interpretation shall be appealed to the County Planning and Zoning Board in accordance with Section 3.04 of Ordinance ____, as Amended. The Director of Planning, in conjunction with the County Arborist, shall render the initial interpretation.
- 2. An application for appeal shall be presented in accordance with Section 3.04.B.7 of the LDC to the Planning and Zoning Board on matters of interpretation.

Q. Waivers

- 1. Waivers shall be heard by the NC-AITC under the following parameters.

- a. The NC-AITC may consider unique development scenarios that result in the preservation of significant natural areas and demonstrates tree protection in a holistic manner – preservation of an intact natural community. This provision is not intended to waive the preservation or replacement requirements defined in this Article but rather address characteristics of development such as reducing building setbacks, reducing the building footprint by increasing building height, reducing required parking, use of Low Impact Development principles as recommended by the County Engineer.
- b. A request for consideration of a waiver from the NC-AITC shall be submitted in writing to the Planning Department. The waiver request shall include the following.
 - i. Narrative describing the request. The narrative shall describe the unique development scenario and provide specific detail as to how the waiver results in a superior development proposal as it relates to a holistic view of tree protection that could not otherwise be achieved without the waiver.
 - ii. Site plan of sufficient detail to adequately review and make a professional recommendation to the NC-AITC. At a minimum, the site plan shall meet the standards for a Preliminary Binding Site Plan as defined in Section 5.07 of the LDC. Additional data may be requested by County staff or County retained arborist.
 - iii. Tree preservation and replacement plan meeting the minimum requirements defined in this Article.
- c. The criteria the NC-AITC shall consider to approve, approve with conditions or deny the request for waiver are as follows:
 - i. The written recommendation of the Development Review Committee including any conditions of approval or reasons for denial.
 - a) The criteria the Development Review Committee will use in making a recommendation is as follows:
 - 1) The proposal is not in contradiction with other established regulations and standards such as the Florida Building Code, National Fire Protection Association's Code, Standards and Manual on Uniform Traffic Control Devices, and International Society of Arboriculture Standards.
 - 2) The proposal does not pose a public health and/or safety concern.
 - 3) Consider any finding or report made by the County retained arborist if utilized by the County to review the proposal.
 - 4) The financial implications on the applicant shall not be considered.
 - ii. The County arborist's report and comments.
 - iii. The applicant has demonstrated to the NC-AITC that the requested waiver will allow for a design that enhances the tree protection and replacement efforts and addresses tree preservation in a holistic manner, i.e. protection of ground cover and understory, preserving swaths of natural area capable of regenerating naturally.
 - iv. The development cannot otherwise be realized through the strict application of the development regulations of Nassau County and, the use of Low Impact Development principles or other techniques result in preservation of larger areas of natural landscapes and tree protection.
 - v. Financial implications on the developer, applicant and/or property owner shall not be a determining factor in the issuance of a waiver.
- d. For criteria for Specimen Tree removal see, Section 37.02.E.2.e.

2. The NC-AITC shall, after receipt of a request for waiver, and review by Planning staff and County arborist shall review said waiver in the following manner.
 - a. Schedule a hearing within thirty (30) days of receipt of a complete application.
 - b. The hearing shall be noticed on the County website and advertised in a newspaper qualifying pursuant to state statute. The advertisement shall run at least seven (7) calendar days prior to the hearing. The applicant shall be responsible for any costs and for providing proof of publication.
 - c. The hearing shall be a Quasi-Judicial hearing and any decision shall be based on competent substantial evidence.
 - d. The NC-AITC shall issue a final written decision at the conclusion of the hearing.
 - e. The County's Quasi-Judicial hearing procedures shall be applicable.
 - f. Any applicant may appeal a decision of the NC-AITC to the Circuit Court in Nassau County, Florida. Said appeal to be filed no later than thirty (30) days after the date of the written decision.
3. Administrative Waiver
 - a. The Planning Director, or designee, may issue an administrative waiver for reducing building setbacks and/or increasing building height by up to five percent and alter minimum perimeter landscape buffer requirements, provided the intent of the buffer is maintained, and the alteration results in the preservation of additional protected trees, at minimum to provide tree protection in accordance with Section 37.02.Q.1.c.ii.
 - b. A request for consideration of a waiver from the Planning Director, or designee, shall be submitted in writing to the Planning Department. The waiver request shall include the following.
 - i. Narrative describing the request. The narrative shall describe the unique development scenario and provide specific detail as to how the waiver results in a superior development proposal as it relates to a holistic view of tree protection that could not otherwise be achieved without the waiver.
 - ii. Site plan of sufficient detail to adequately review and make a professional determination. At a minimum, the site plan shall meet the standards for a Preliminary Binding Site Plan as defined in Section 5.07 of the LDC. Additional data may be requested by County staff or County commissioned third-party reviewers.
 - iii. Tree preservation and replacement plan meeting the minimum requirements defined in this Article.
 - c. The criteria by which the Planning Director, or designee, will base their decision to approve, approve with conditions or deny the request for waiver are as follows:
 - i. The Planning Director, or designee, may consult, with the Development Review Committee and seek recommendations including any conditions of approval or reasons for denial. The DRC will use the following criteria in making a recommendation:
 - a) The proposal is not in contradiction other established regulations and standards such as the Florida Building Code, National Fire Protection Association's Codes and Standards, Manual on Uniform Traffic Control Devices, and International Society of Arboriculture Standards.
 - b) The proposal does not pose a public health and/or safety concern.
 - c) Consider any finding or report made by the County retained arborist if utilized by the County to review the proposal.
 - d) The financial implications on the applicant shall not be considered.

- ii. The applicant has demonstrated to the Planning Director, or designee, that the requested waiver will allow for a design that enhances the tree protection and replacement efforts and addresses tree preservation in a holistic manner, i.e. protection of ground cover and understory, preserving swaths of natural area capable of regenerating naturally.
 - iii. The development program cannot otherwise be realized through the strict application of the development regulations and, the use of Low Impact Development principles or other techniques result in greater preservation of natural areas and tree protection.
- 4. Nassau County reserves the right to request a third-party review by a ISA-certified arborist of any data submitted as part of a request for waiver. The cost of the third-party review will be paid by the applicant.
- 5. A fee for the processing of a waiver request shall be set by separate Resolution of the Board of County Commissioners and amended from time to time as appropriate.

R. Review fee. By separate resolution of the Board of County Commissioners a fee shall be established for the review of tree protection and replacement plans for New Development and restoration plans in the unincorporated areas of Amelia Island. For after-the-fact review of tree protection and replacement and/or restoration plans the review fee shall be four times the amount.

S. Administration and Enforcement

- 1. The Planning Department shall administer the provisions of these regulations. The Code Enforcement Department shall enforce the provisions of these regulations. A Code Enforcement Officer shall have the authority, pursuant to this Ordinance, to provide Notice of Violation(s) and citations for violations to the property owner and/or contractor, site work company, individual or engineer via hand-delivery and notation of date and time of delivery and/or a certified letter from the Code Enforcement Division. The Code Enforcement Board, based on procedures as set forth in Chapter 1, Article III in Ordinance _____, as amended, shall hear the case. Suspended permits may be reinstated after tree protection measures are brought into conformance with an approved tree protection and replacement plan and/or restoration plan and any fines and code enforcement penalties (if applicable) are addressed.
- 2. When, after an investigation by the Code Enforcement Division and upon determination of the Code Enforcement Officer, a stop work order may be issued. A stop work order on a specific parcel may be issued by the Building Official or designee, Code Enforcement Officer, County Engineer or designee, County Arborist, or County Manager. As determined necessary by the County Manager or designee, a stop work order may be applied to site work, infrastructure installation, vertical construction or any other development/building activity. The stop work order may not be lifted until all fines/review fees (as applicable) have been paid, a restoration plan approved (as applicable) and any required bond (as applicable) has been secured and approved to form by the County Attorney.
- 3. The property owner and contractor, or person(s) who performed the tree removal, may be held jointly liable.

T. Penalties

Penalties shall be in accordance with the requirements set forth in Chapter 1, Article 3 of Ordinance _____ and the Specific Penalties for Violation of Tree Protection measures defined in Section 37.02.U of Ordinance _____. Each violation of this Article is deemed a separate and distinct offense.

U. Specific Penalties for Violation of Tree Protection Measures

1. If the Code Enforcement Board has determined the removal or abuse, as defined in this Article, of a protected tree(s) has taken place in violation of this Ordinance a restoration plan shall be prepared by an ISA-certified arborist and submitted to the Code Enforcement Board for review within thirty (30) days of the Code Enforcement Board finding that a violation has occurred. The consideration of the plan will be pursuant to a public hearing before the Code Enforcement Board. The alleged violator, upon receipt of a Code Enforcement citation, prior to a finding of a violation by the Code Enforcement Board, may submit a restoration (mitigation plan) to the Planning Department for review based on the requirements set forth herein. At a minimum, the owner and/or developer shall replace, inch-for-inch one (1) caliper inch for every inch of DBH removed, any and all trees that are removed without authorization. The restoration plan shall include all the requirements of a tree protection and replacement plan, including an irrigation plan and maintenance plan. The restoration plan shall also include a schedule for implementation.
2. The Planning Department shall review the plan, with the assistance of a County designated ISA-certified arborist and provide comments to the Code Enforcement Board. The comments are to be submitted prior to the Code Enforcement Board public hearing and copies provided to the violator.
3. No preservation credits shall be applicable to offset the unauthorized removal of trees.
4. The determination of inches (DBH) removed shall be based on measuring the diameter of the remaining stump. If the remaining portion of the stump is less than four and one-half feet tall the measurement shall be based on the diameter of the remaining portion of the stump.
5. In the event that an insufficient trunk of the removed tree exists to determine replacement requirements, these facts shall be determined by a County designated ISA-certified arborist based upon any available information, including photographs, aerial imagery or a survey of trees of the same species existing in the general vicinity of the removed tree or trees found in the same natural community.
6. In evaluating a proposed restoration plan, the Code Enforcement Board may consider the following:
 - a. the cross-sectional area of trunk(s) removed;
 - b. the specific aesthetic character of the tree removed;
 - c. any special function the tree carried out as a screen or buffer;
 - d. amount of other trees preserved on the site, and the opportunities for planting additional trees;
 - e. the ability to plant trees or restore natural areas on other property; and
 - f. any short-term or long-term negative environmental impacts from the unauthorized tree removal, including, but not limited to, erosion, siltation, impacts on listed plant and/or animal species, water circulation patterns, water quality standards, and floodplain capacity or conveyance (including, but not limited to, swales or overland sheet flow, where pertinent).
7. Prior to review by the Code Enforcement Board, a County-retained ISA-certified arborist shall review the restoration (mitigation) plan and provide a report and recommendation for consideration. The owner, developer and/or contractor shall be responsible for the cost of the County retained ISA-arborist, including the cost to appear at a hearing or continuation of a hearing. Said cost shall be paid prior to issuance of a permit.
8. Bond: The Code Enforcement Board may require a bond be acquired to insure the performance and completion of a restoration plan, and/or the maintenance and survival of

the implemented restoration plan. If a bond is required, the bond amount shall be the cost to fully implement the approved restoration plan plus a 25% contingency. The cost estimate shall be provided on a form created by the County Attorney and shall require supporting documentation.

9. Withholding Approvals: No further County permits, site plan approvals or the functional equivalent for the subject property or parcel shall be issued or inspections provided until all violations of this article are corrected or a restoration plan has been approved by the Code Enforcement Board. No certificate of occupancy shall be granted unless and until the restoration plan is implemented or a performance bond satisfactory to the County and its attorney is submitted and approved by the County.
10. The removal of a healthy specimen tree not meeting the criteria defined in Section E.2, the removal of a healthy specimen tree without a permit, or the damage of a healthy specimen tree which kills or will more likely than not cause the tree to die shall warrant the assessment of a penalty of up to \$15,000, as determined appropriate by the Code Enforcement Board, pursuant to Sections 37.02.T and U of this Article, in addition to meeting the restoration requirements defined herein.

V. Conflict

In the event that any section of these regulations is found to be in conflict with any other county code, ordinances or regulation, the more restrictive shall apply.

W. Severability

It is the intent of the Board of County Commissioners, and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Article 32 - Definitions

Barricades (as differentiated from Tree Protection Barricades): A post and rail configuration used for the protection of trees during construction activity. The upright posts shall be a minimum of a two (2) by two (2) inch (common industry standard) wooden stake, four (4) feet long. A minimum of a one (1) by four (4) inch (common industry standard) wooden board shall be used to connect the upright posts. High-visibility heavy-gauge tape may be substituted for the one (1) by four (4) inch connecting boards. The barricade tape must be a minimum of three (3) inches wide, and of seven (7) mil-thick polyethylene construction, and be a high-visibility color. See Tree Protection Barricades

Caliper Inches: Caliper means the trunk diameter of planted trees. Caliper shall be measured six inches above the ground for trees up to and including four inches in caliper, and measured 12 inches above the ground for trees exceeding four inches in caliper. If the tree has an enlarged irregular base, then the caliper measurement shall be taken up where the trunk has a more regular circumference, but in no case higher than four and one-half feet above the ground. If the tree forks between ground level and one foot above ground level, then the tree shall be considered a multi-trunked tree. Caliper for multi-trunked trees shall be determined by measuring each trunk immediately above the fork and adding the total caliper of the four largest trunks. (See also and compare definition of DBH in this Section.)

Canopy Tree: Those trees listed in Table 37-1 of Section 37.05 as amended from time to time.

Diameter at Breast Height (DBH): DBH (Diameter Breast Height) means the trunk diameter of an existing tree measured four and one-half feet above the average ground level at the tree base. If the tree forks between four and one-half and two feet above ground level, DBH is measured below the swell resulting from the fork. Trunks that fork below two feet, shall be considered multi-trunk trees. DBH for multi-trunk trees shall be determined by measuring each trunk immediately above the fork and adding the total diameters of the four largest trunks. (See also and compare definition for caliper in this Section.). Diameter (d) = Circumference (C) / Pi (π) or, $d=C/\pi$

Construction Zone: The impervious, semi-impervious area of development, related infrastructure, stormwater management systems and the lands within six (6) feet thereof.

County Arborist: The certified arborist acting on behalf of the County, as either a staff or contract position.

Hat-rack/Topping: To severely prune a tree in order to permanently maintain growth at a reduced height or to flat-cut a tree, severing the leader or leaders, or pruning a tree by stubbing off mature wood larger than three (3) inches in diameter; or reducing the total circumference or canopy spread not in conformance with National Arborist Society standards.

Limits of Disturbance: A boundary denoting the maximum extent of any development activity. Development activity includes, but is not limited to, storage of material or equipment, access roads, haul roads, excavation, grading, deposit of fill material or aggregate, site work, erection of a structure, placement of construction trailers, placement of dumpsters, installation of utilities, operation of heavy equipment, or any other development related activity. Areas outside the Limits of Disturbance are not to be impacted by development activity.

Low impact development (LID): An approach to land development that preserves and protects natural-resource systems using various site planning and design approaches and technologies to simultaneously conserve and protect natural resource systems while managing stormwater runoff. The approach includes using engineered small-scale hydrologic controls to replicate the pre-development hydrologic regime through infiltrating, filtering, storing, evaporating, and detaining runoff close to its source.

Multi-trunk Tree: A tree that splits into two or more trunks between natural grade and 54 inches above natural grade.

New Development: Any new construction or site work whether residential, non-residential or mixed-use, any modification, expansion, or alteration to an existing structure, alteration to any site including borrow pit construction, site grading, driveways or other similar activity, any new or expanded accessory use or structure – shed, pool, parking area, means of ingress/egress, drainage facility, pond, etc., and/or any other aspect of site or structural development or modification that may adversely impact existing trees.

Open space: Landscaped or undeveloped lands suitable for resource-based recreation or conservation uses. The term open space shall not include lands utilized for excavations such as ponds, fishing ponds, borrow pits, stormwater management facilities or other similar development activity.

Protected tree: Any existing, healthy tree as determined by an ISA certified arborist having a five (5) inch DBH, or greater and not identified on the most recent Florida Exotic Pest Plant Council Invasive Plant list (Category I or II).

Shade Tree: Any native, self-supporting woody plant of a species that is generally well-shaped, well-branched, and well-foliated which normally grows to an overall height of thirty-five (35) feet with a minimum average mature crown spread of thirty(30) feet, and which is commonly accepted by the local horticultural and arboricultural professionals as a species which can be expected to survive for at least fifteen (15) years in a healthy and vigorous growing condition over a wide range of environmental conditions.

Specimen Tree: Specimen Trees are any existing healthy *Quercus virginiana* and *Quercus geminate* (live oak), as determined by an ISA-certified arborist, measuring forty (40) inches or more in diameter at breast height, or, a multi-trunk live oak, as determined by an ISA-certified arborist with an aggregate measurement of sixty (60) inches or more in diameter at breast height.

Street Trees: Trees planted near the street curb line or within swales near the curb line of streets are called street trees. Trees planted in a median between traffic lanes are also called street trees.

Tree Protection Barricade: A protective barrier signifying the boundary of the tree protection zone. The tree protection barricade shall be at least three (3) feet tall. The barrier shall consist of either a wood fence with 2x4 posts placed at a maximum of eight (8) feet apart, with a 2x4 minimum top rail.

Tree protection zone:

A circular area around a protected tree with a radius equal to six times the diameter of the trunk of the protected tree at breast height. In no case shall a tree protection zone be less than seventy-two (72) inches. As an example, a protected tree with a DBH of fifty (50) inches will have a tree protection zone with a radius of three-hundred (300) inches. A protected tree with a DBH of eight (8) inches will have a tree protection zone of seventy-two inches (72).

Understory Tree: Those trees listed in Table 37-04 of Section 37.05 LDC as amended from time to time.

Unified Multi-lot Development: This term references residential, non-residential and mixed-use projects which, within their project/development boundary, create multiple development tracts of land for conveyance. This would include residential subdivisions, master planned retail centers with outparcels, master planned mixed-use projects which create multiple tracts for development, and similar development programs.

Utility Area: The land area(s) utilized to facilitate the placement of infrastructure necessary to provide commonly expected utilities. This includes the infrastructure necessary to provide electricity, natural gas, water, sewage, stormwater collection and conveyance and telephone/cable/internet (fiber optics).

SECTION 4. CODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall be included and incorporated into the LDC. The codifier may re-letter or renumber sections to conform to the uniform numbering and style of the LDC.

SECTION 5. SEVERABILITY

It is the intent of the Board of County Commissioners, and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 6. EFFECTIVE DATE

This ordinance shall take effect 180 days after filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

ADOPTED THIS _____ DAY OF _____, 2021 BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

Its: Chairman

ATTEST as to Chairman's Signature:

JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form

Michael S. Mullin,
County Attorney