

ORDINANCE 2008- 01

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA CREATING A NEW ARTICLE 37 OF THE LAND DEVELOPMENT CODE, NATURAL RESOURCES PROTECTION; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR CANOPY TREE PROTECTION AND REPLACEMENT WITHIN UNINCORPORATED PORTIONS OF AMELIA ISLAND; PROVIDING FOR UPLAND BUFFERS ADJACENT TO JURISDICTIONAL WETLANDS; PROVIDING FOR CONSTRUCTION WITHIN BEACH DUNES AND COASTAL STRAND; PROVIDING FOR LANDSCAPING STANDARDS APPLICABLE TO NEW CONSTRUCTION; PROVIDING FOR NATURAL BUFFERS WHERE CERTAIN USES ABUT ONE ANOTHER; PROVIDING FOR BEACHFRONT LIGHTING RESTRICTIONS FOR THE PROTECTION OF MARINE TURTLES; PROVIDING FOR CANOPY/SCENIC ROADS; PROVIDING FOR HISTORIC AND ARCHAEOLOGICAL PROTECTION; AMENDING AND RECODIFYING SECTIONS 37.1 THROUGH 37.14 OF THE EXISTING ZONING CODE; REPEALING SECTIONS 5.5, 6.5 AND 6.8 OF THE DEVELOPMENT REVIEW REGULATIONS; REPEALING SECTION 28.16.2 OF THE EXISTING ZONING CODE; REPEALING SECTION 28.17 OF THE EXISTING ZONING CODE; REPEALING SECTION 28.08 OF THE EXISTING ZONING CODE; REPEALING SECTIONS 7-191 THROUGH 7-198 OF THE CODE OF ORDINANCES; REPEALING SECTIONS 25-61 THROUGH 25-71 OF THE CODE OF ORDINANCES; REPEALING SECTIONS 38.01 THROUGH 38.08 OF THE EXISTING ZONING CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Nassau County is adopting a unified Land Development Code and desires to create a Code that is unambiguous, consistent in its application to similar classes of property and makes clear property rights and development procedures and standards to developers, investors and the general public; and

**WHEREAS**, the Planning and Zoning Board and the Board of County Commissioners through joint meetings have directed and worked with Growth Management Department to create this Natural Resources Protection Article of the Land Development Code; and

**WHEREAS**, the provisions of this Ordinance provide development standards, criteria and regulations consistent with the Nassau County Comprehensive Plan; and

**WHEREAS**, the provisions of this Ordinance will protect natural resources and conservation areas during the planning and development review process through specific provisions for their protection, with an emphasis on creating incentives for resource protection; and

**WHEREAS**, by enacting the new Land Development Code, it will create the necessity to rescind conflicting portions of the existing Nassau County Zoning Code and create appropriate provisions in the new Nassau County Land Development Code; and

**WHEREAS**, the Planning and Zoning Board conducted a public hearing on this Ordinance on December 4, 2007 and voted to recommend approval; and

**WHEREAS**, the first public hearing was conducted on January 14, 2008 whereupon the Board directed Staff to significantly redraft Sec. 37.02; and

**WHEREAS**, 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**

- A. This Ordinance is consistent with the Nassau County Comprehensive Plan, in particular Policies 1.04A.02, 1.04.02A, 1.04.03A, 1.04B.04, 1.08.01, 4.05B.02, 5.01.05, 5.02A.01, 5.02A.04A, 5.09.05, 5.09.07, 5.11.01, 5.14.01, 5.14.03, 6.02.01, 6.02.03 and 6.05.03.

**SECTION 2. REPEAL**

- A. Article 37 (Tree Protection) of Ordinance 97-19, the Nassau County Zoning Code, as same may have been amended from time to time, is hereby repealed in its entirety (and readopted as Sec. 37.02).
- B. Section 5.5, 5.5.1 through 5.5.6 (Landscape Requirements) of the Nassau County Development Review Regulations are hereby repealed in their entirety.
- C. Section 6.5 (Wetland Buffer) of the Nassau County Development Review Regulations is hereby repealed in its entirety (and readopted as Sec. 37.03).

- D. Section 6.8 (Vegetated Oak Hammock and Dune Interface Areas) of the Nassau County Development Review Regulations is hereby repealed in its entirety.
- E. Section 28.16.2 (Site Plan Landscape Requirements) of Ordinance 97-19, the Nassau County Zoning Code, as same may have been amended from time to time, is hereby repealed in its entirety.
- F. Section 28.17 (Landscape Requirements) of Ordinance 97-19, the Nassau County Zoning Code, as same may have been amended from time to time, is hereby repealed in its entirety.
- G. Section 28.08 (Buffers) of Ordinance 97-19, the Nassau County Zoning Code, as same may have been amended from time to time, is hereby repealed in its entirety.
- H. Article XII, Sections 7-191 through 7-198 inclusive (Beachfront Lighting Restrictions for the Protection of Sea Turtles) of the Nassau County Code of Ordinances are hereby repealed in their entirety (and readopted as Sec. 37.07).
- I. Article III, Sections 25-61 through 25-71 inclusive (Canopy/Scenic Roads) of the Nassau County Code of Ordinances are hereby repealed in their entirety (and readopted as Sec. 37.08).
- J. Sections 38.01 through 38.08 (Historic Designation) of Ordinance 97-19, the Nassau County Zoning Code, as same may have been amended from time to time, are hereby repealed in their entirety (and readopted as Sec. 37.09).

**SECTION 3. ADOPTION**

A new Article 37 of the Nassau County Land Development Code is hereby created and adopted and shall read as follows:

**NASSAU COUNTY, FLORIDA**  
**LAND DEVELOPMENT CODE**

**ARTICLE XXXVII**  
**NATURAL RESOURCE PROTECTION**

**37.01 Purpose and Intent**

These regulations are intended to accommodate responsible development while protecting and preserving valuable natural and historic resources. In furtherance of this objective, this Article in particular, and this Land Development Code in general, provides incentives for developers to employ sound environmental practices and plan for proposed activities and projects in the context of natural systems and historic features

of the landscape. Developers are encouraged to use conservation design techniques such as clustering, density transfers, stem wall foundations, tree wells, native landscaping adapted to the soil and hydrology of the site. These, and other development practices, are intended to produce marketable projects while protecting natural and historic resources. The purpose of this Article to:

- (a) Implement the Comprehensive Plan, with particular emphasis on preserving and protecting biodiversity and the ecological values and functions of uplands, wetlands, open bodies of water and flowing streams, groundwater, dunes and other significant geologic features, soils and slopes, and flora and fauna; and
- (b) Protect the natural resources, open spaces, and historic character of Nassau County in a manner that preserves and cultivates a unique sense of place while fostering economic well-being, enhancement of property values and the quality of life, and minimizing present and future vulnerability to natural and man-made hazards.

### **37.02 Native Canopy Tree Protection**

#### **A. Purpose and Intent.**

The purpose of this article is to establish regulations governing the protection of Oak and Magnolia trees as a valuable community resource within the unincorporated areas of Amelia Island to:

1. Encourage the retention and planting of Oak and Magnolia trees;
2. Recognize the importance of Oak and Magnolia trees and their meaningful contribution to a healthy, beautiful, and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention, wetland erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands; and,
3. Promote the general health, safety, and welfare of the community.

Tree protection is beneficial to the County by providing environmental and energy efficiency safeguards, improving community appearance and quality of life, enhancing property values, and creating a functional living environment for existing and future residents.

Therefore, the Board of County Commissioners finds that it is in the best public interest to enact and enforce the regulations described herein for the purpose of controlling the removal of Oak and Magnolia trees, clear cutting and strip clearing of land in the unincorporated areas of Amelia Island.

**B. General Requirements.**

1. The terms and provisions of this article shall apply as specified herein to all Class IV developments, pursuant to Section 5.1 of Ordinance 2000-40 as amended from time to time, and government agencies located within the unincorporated areas of Amelia Island.
2. It shall be unlawful for any person, firm or corporation, either individually or through an agent, to cut down, destroy, clear cut, remove, or cause to be destroyed through damaging any Oak or Magnolia tree without first obtaining site plan approval of the Development Review Committee and final approval of the Board of County Commissioners, except as specifically exempted herein.
3. Developers of sites that have been completely or partially cleared of trees due to agricultural/silviculture use, but have not secured site plan approval of the Development Review Committee and final approval of the Board of County Commissioners, shall be required to comply with the minimum tree requirements as described in subsection I.

**C. Exemptions.**

1. Site plan approval of the Development Review Committee and final approval of the Board of County Commissioners shall not be required under the following conditions and situations, as determined by the Planning and Zoning Department unless otherwise specified:
  - a) A bona fide agricultural/silviculture use such as tree nurseries, forest crops, farming, and greenhouses.
  - b) Removal of dead or diseased Oak or Magnolia trees that have fallen from natural causes.
  - c) Removal of Oak or Magnolia trees that endanger public or private property, and the public health, safety and welfare of the community.
  - d) Removal of Oak and Magnolia trees planted on the premises of a plant nursery or tree farm that have been grown expressly for the purpose of selling to the general public in the ordinary course of business.
  - e) Removal of Oak and Magnolia trees within approved utility rights-

of-way or easements that are necessary to supply gas, water, sewer, telephone, cable television, electrical service, or other needed utilities, subject to the provisions of Ordinance 2003-04.

- f) Public utilities with the power of eminent domain may remove or transplant trees either on-site or off-site.
- g) Emergency conditions may require the Department of Emergency Management Services to waive all, or part, of the requirements of this article in the event of manmade or natural disasters such as hurricanes, tornadoes, floods, storms/high winds, hard freezes, fires, etc. The waiver shall apply to a geographically defined area for a period not to exceed ninety (90) days. Longer periods shall require approval of the Board of County Commissioners.
- h) Class IV development properties (containing an existing structure) in existence as of the date of adoption of these regulations.

#### **D. Review Procedures.**

1. A tree inventory and retention/landscape plan shall be submitted to the Development Review Committee, pursuant to Section 5.2(10) and 5.3 of the Nassau County Development Review Regulations, as amended from time to time, prior to the commencement of any development activity, except as specifically exempted herein.
2. The removal of Oak and Magnolia trees may be allowed for construction purposes where all reasonable alternatives have been documented and exhausted for relocating the specific construction.
3. The removal/replacement of Oak and Magnolia trees that are twenty-four (24) inches DBH or greater is strongly discouraged. Therefore, all reasonable alternatives or methods that are available, such as design modifications, shall be closely examined before removal will be authorized.
4. During site plan review, the Development Review Committee shall consider the effect that the proposed development activity will have on the future viability of the Oak and Magnolia trees to be retained/relocated within the area to be developed.
5. The removal of Oak and Magnolia trees shall be allowed, as determined by the Development Review Committee, if one or more of the following conditions exists:

- a) Street opening. Tree location restricts the opening of a street or road right-of-way.
- b) Utilities and drainage. Tree location restricts the construction of public utility lines or drainage facilities.
- c) Property access. Tree location restricts vehicular access to the property, where there are no other reasonable access points.
- d) Property use. Tree location restricts reasonable use of the property consistent with all other applicable city, county and state codes, statutes and/or ordinances; and design modifications are not practical or reasonable.
- e) Hazard. A tree that constitutes a potential hazard to life or property and can be resolved by removal.
- f) Poor tree health. Tree is dead, lacking functioning vascular tissue, or deteriorating to such a state that restoration methods to bring the tree to a sound condition are not practical; or the tree have a disease that may be transmitted to other trees, thereby endangering their health; and, as documented by a qualified botanist.
- g) Thinning of trees. Trees are so densely situated on a parcel as to significantly impair light and air circulation, which causes poor health conditions or tree disease, so that removal of up to twenty five percent (25%) of such trees is necessary to alleviate the condition.
- h) An approved site plan shall identify which trees are to be removed, methods of protection from impacts of construction, and the tree replacement requirements necessary to compensate for the loss of protected Oak and Magnolia trees.

#### **E. Submission Requirements.**

1. All applicants for site plan approval for Class IV developments are hereby required to submit a tree inventory and tree retention/landscape plan as part of the standard site plan review submission procedures, including, but not limited to the following:
  - a. Developers of all new Class IV residential developments shall be required to submit a streetscape plan, including proposed tree retention and landscaping.

- b. Each tree inventory shall have a drawing or accurate representation with an appropriate scale to show tree locations, delineating the following information:
  1. Property boundaries, existing and proposed structures and surrounding road system;
  2. Location, size, and species (utilizing botanical or common names) of all Oak and Magnolia trees within areas of construction.

**F. Tree Replacement.**

1. All protected Oak and Magnolia trees that are to be removed as part of an approved site plan shall adhere to the following tree replacement standards:
  - a) Oak and Magnolia trees less than twenty-four (24) inches DBH: one (1) tree for one (1) tree
  - b) Oak and Magnolia trees greater than twenty-four (24) inches: one (1) DBH for one (1) DBH
2. All protected Oak and Magnolia trees that have been removed, for which an approved site plan was required but not obtained, will require, together with other appropriate sanctions, replacement according to the following tree replacement formula. Tree replacement shall be at two (2) times the total DBH of all protected trees removed without an approved site plan.
3. All replacement Oak and Magnolia trees shall be a minimum of three (3) inches DBH, ten (10) feet tall, and five (5) feet wide at the time of planting.
4. Replacement trees shall be planted on-site, if practical, otherwise the developer shall donate to the County and plant the required trees on public property, subject to approval by the Board of County Commissioners.
5. All replacement trees shall be in good health, conform to the standards for Florida No. 1 or better as given in Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services, Tallahassee (97T-05, second edition, February 1998), which is hereby adopted and included by reference herein.



## **H. Tree Protection During Construction.**

Property owners/developers shall protect, during construction, all protected Oak and Magnolia trees within areas of construction, as identified on the approved site plan.

1. Prior to and during land clearing, the owner, developer or agent shall clearly mark (with red flagging) all Oak or Magnolia trees proposed to be removed and shall erect barricades around the tree protection zone of all Oak or Magnolia trees to be protected. The barricades must remain in place and be in good condition throughout construction. Barricades may be removed for the final grading. Building or other development permits may be revoked if protective measures are not used at any time during construction.
2. The following shall be prohibited within the tree protection zone (defined in Article 32) of designated trees, unless authorized in writing by the Planning and Zoning Director:
  - a) Parking of heavy equipment, cars and trucks or vehicular traffic;
  - b) Stockpiling of any materials;
  - c) Deposition of soil, sediment, or mulch;
  - d) Grading or grubbing;
  - e) Excavation or trenching;
  - f) Burning or burial of debris, within the entire construction site;
  - g) Dumping oil, gasoline, paint, chemicals, wastewater, or other construction wastes. Storage of potentially hazardous materials shall be in appropriate, non-leaking containers as far away from tree protection zone as possible.

## **I. Minimum Tree Requirements.**

All Class IV non-residential developments consisting of more than 35,000 square feet of total building area requesting site plan approval shall meet the minimum tree requirements of one (1) Oak or Magnolia tree per five thousand (5,000) square feet of building area.

1. Credit on a one (1) tree for one (1) tree basis toward the minimum tree requirements shall be given for each Oak or Magnolia tree retained on site.

2. Any Oak or Magnolia trees planted to meet the minimum tree requirements shall be a minimum of three (3) inches DBH, ten (10) feet tall, and five (5) feet wide at the time of planting.
3. Fulfillment of the minimum tree requirements in this section shall not be interpreted to waive any other landscaping requirements on the part of the applicant.
  - (a) In the event that the amount of retained Oak or Magnolia trees exceeds the requirements of this section, credit on a one (1) tree for one (1) tree basis towards any other landscaping requirements shall be given for each Oak or Magnolia tree retained on site in excess of the minimum tree requirements.
  - (b) Proper care and maintenance of recently planted trees; i.e., necessary water, fertilizer, and support structures, shall be the property owner's/developer's responsibility, subject to the enforcement provisions of Article 4 of the Nassau County Zoning Code and Chapter 1, Article 3 of the County Code of Ordinances.
  - (c) All required trees shall be in good health, conform to the standards for Florida No. 1 or better, as given in the Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services as referenced herein.

#### **J. Harmful Acts.**

1. No person shall abuse, mutilate or otherwise damage any protected tree, as described herein, or any tree located on public property, including those trees located in the public right-of-way along street frontages within subdivisions.
2. The reasonable and proper trimming of protected trees on public or private property by authorized persons, in accordance with accepted horticultural methods established by the International Society of Arborists (ISA), shall be allowed.
3. No person shall attach any signs in an injurious manner to 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.

**K. Appeals.**

1. It is the intent of this article that all questions of interpretation and enforcement shall be first presented to the County in accordance with Section 3.03 and Article 4 of the Nassau County Zoning Code.
2. An application for appeal of said decisions shall be presented in accordance with Section 3.04(10)(i) of the Nassau County Zoning Code on matters of interpretation and to the code enforcement board on matters of enforcement.

**L. Administration and Enforcement.**

The Planning and Zoning Department shall administer the provisions of these regulations. The Code Enforcement Department shall enforce the provisions of these regulations. Any violation of the provisions set forth herein shall be brought to the property owner's attention by a certified letter from the Code Enforcement Department. A violation of this article shall, in addition to other appropriate sanctions, be enforced in accordance with the code enforcement board procedures as set out under Chapter 1, Article 3 of the County Code of Ordinances and the provisions of Chapter 162, Florida Statutes.

**M. Penalties.**

Penalties shall be in accordance with the requirements set forth in Chapter 1, Article 3 of the County Code of Ordinances.

**N. 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.

**37.03 Wetlands and Upland Buffers**

- A. A minimum undisturbed natural vegetative upland buffer of twenty five (25) feet shall be required and maintained between developed areas and contiguous (i.e., non-isolated) wetlands to protect the water quality of the wetlands. The twenty five (25) feet shall be measured from the St. Johns River Water Management District or Florida Department of Environmental Protection wetland jurisdictional line. It is the objective of this requirement that a minimum twenty five (25) foot upland buffer be established in all areas except for those circumstances where an averaging of the buffer width, because of an unavoidable buffer reduction, achieves a greater overall upland buffer

width. In no instance shall the upland buffer be less than fifteen (15) feet, except for those areas adjacent to unavoidable wetland impacts such as road crossings.

1. The buffering requirements stipulated above shall only apply to projects for which a permit is not required by the St. Johns River Water Management District (SJRWMD). Projects which do require such permitting shall reflect the buffers approved by SJRWMD upon submittal of development plans for County approval.

B. In all cases, the applicable buffer shall be depicted on all site plans, development plans, plats and other documents submitted to authorize the review for development. A table demonstrating the provision of wetland buffers shall be included on all development plans. The format for such table shall be as follows:

Required Area at 25' (SF)	Provided Area (SF)	Provided Average Buffer
####	####	##.##'

C. All development plans shall include a note stating the following "Upland buffers shall be maintained in their natural vegetated condition. Native vegetation removed or destroyed within the upland buffer in violation of Nassau County Comprehensive Plan Policy 1.04A.02 shall be restored. These areas shall be replanted with comparable native vegetative species as were removed or destroyed. Noxious and non-native invasive plant materials can be removed. Dead vegetation can be removed. Limbing can occur within the buffers, provided that the limbs to be removed are less than three (3) inches in diameter." Where the upland buffer is, or will be, subject to a conservation easement, the plat will identify such conservation easement and indicate it has that meaning prescribed by Sec. 704.06, F.S.

D. One unpaved walkway or elevated catwalk of no more than five ( 5) feet in width may be provided through the upland buffer for each lot.

E. Upland buffers may be included within a development lot, tract or parcel. For lots created after the effective date of this Ordinance, the wetland buffer shall not count toward the minimum setback requirement of the zoning district in which it is located. For lots having an area of less than 8,700 square feet, the wetland buffer is not creditable toward the minimum lot area or setback.

F. Bona fide agriculture and silviculture operations consistent with and using State of Florida prescribed "Best Management Practices" in the conduct of their operations shall be exempt from these buffer regulations.

- G. No development shall be permitted to deviate from these wetland buffer requirements except as authorized by the appropriate County, Regional, State and/or Federal agency and/or as authorized by law. Nassau County shall permit deviation from these standards only in those instances where the applicable Regional, State, or Federal agency or applicable law has authorized the proposed deviation. In any case where a deviation is granted, it shall be the minimum necessary to permit reasonable use or access.

Note: It is the developer's responsibility to inform any prospective buyer that the required buffer of native vegetation is not to be disturbed or removed at any time by the property owner as this will be a violation of the adopted Nassau County Comprehensive Plan.

#### **37.04 Beach Dunes and Coastal Strand**

The beach dune is characterized by the wind-deposited foredune and wave-deposited upper beach. Vegetative indicators include sea oats and dune sunflower. This area serves the primary nesting habitat for numerous shorebirds and marine turtles. The coastal strand is characterized by wind-deposited dunes vegetated with a dense thicket of salt-tolerant shrubs, especially saw palmetto, sand live oak, cabbage palm and Spanish bayonet. The coastal strand lies seaward of the maritime hammock. The beach dune together with the coastal strand are referred to as the coastal conservation area for the purpose of this section. All development within the coastal conservation area shall comply with the regulations of Chapter 161, F.S. and FDEP regulations regarding construction within the Coastal Construction Control Line. Development proposals within the coastal strand will also comply with applicable procedures and standards of the Florida Fish and Wildlife Conservation Commission (FWCC). Development approvals issued by Nassau County within the coastal conservation area will:

- A. Occur after the issuance of all necessary State and Federal permits; or
- B. Be conditioned upon the receipt of all necessary State and Federal permits prior to the start of construction; and
- C. Not restrict public beach access points such as easements, rights-of-way and legal vehicle parking spaces.
- D. Development review will address design and location in order to best protect the beach and dune system, native salt resistant vegetation and threatened and endangered species.

### **37.05 Landscaping**

#### **A. Applicability**

1. The standards established in this Section are to be considered the minimum requirements for the design, plant selection, installation and maintenance of landscape elements and site improvements and shall apply to all new development.
2. Developments constructed under previously effective landscaping requirements are not required to comply with this Section. However, the requirements of this Section shall also apply to the redevelopment, reconfiguration, expansion or change of use of a previously developed site, unless such change falls below the following threshold:
  - a. The existing developed impervious area is 7,500 square feet or less, and the proposed expansion of impervious surface is 750 square feet or less.
  - b. The existing developed impervious area is greater than 7,500 square feet, and the proposed expansion of impervious surface is less than 2,000 square feet, and also less than ten percent of the existing impervious area on the parcel or lot.
3. Partial exemption. Developments that have received site plan approval or construction plan approval prior to the effective date of this Ordinance are subject only to the minimum tree planting by use, subsection C.

#### **B. Plant Material**

All installed trees, shrubs and groundcovers shall conform to the standards for Florida 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. Synthetic or artificial trees, shrubs, groundcovers or vines are not acceptable substitutes. In choosing plant materials, consideration should be given to the amount of sun or shade, the wetness or dryness of the soil, the effects of salt spray (where applicable), the amount of irrigation required and the mature size and spatial needs of plants chosen.

The minimum number of trees required by this Section shall be either qualifying existing trees preserved on-site or more than one species listed in Tables 37-1 or 37-2. Trees planted in addition to these minimum requirements of this Section may be any species of canopy tree or palm except for the prohibited species listed herein. In order to prevent a monoculture, new landscaping should not include more than 50 percent of any one genus or 25 percent of any one species. All

trees shall be planted in a minimum dimension of ten (10) feet. This minimum planting area must be free of all pavement and vehicle overhang in order to prevent possible tree damage. All trees shall have a minimum trunk diameter, measured six inches (6") above ground level, in accordance with Table 37-3.

<b>Table 37-1, Nassau County Native Canopy Trees</b>					
NAME	Common Name	Mature Height	Rate of Growth	Salt Tolerance	Drought Tolerance
Acer Rubrum	Red Maple	35-50ft	Fast	Low	Med
Betula nigra	River Birch	45-65ft	Fast	Low	Low
Bumelia spp	Buckthorn	20-40ft	Med	M/L	M/High
Carpinus Caroliniana	American hornbeam	25-35ft	Slow	Low	Low
Carya glabra	Pignut hickory	80-120ft	Fast	Low	High
Cercis canadensis	Redbud	20-30ft	Med	Low	High
Cornus Florida	Flowering dogwood	20-30ft	Med	Low	High
Diospyros Virginiana	Persimmon	30-60ft	Med	Low	Med
Fagus grandifolia	American Beech	50-100ft	Slow	Med	Med
Ilex attenuata	East Palatka Holly	30-45ft	Med	Med	High
Ilex cassine	Dahoon Holly	25-40ft	Med	Med	Med
Ilex Opaca	American Holly	30-45ft	Slow	Med	Med
Juniperus Silicicola	Southern Red Cedar	25-30ft	Med	High	High
Juniperus Virginiana	Eastern Red Cedar	10-40ft	Slow	Med	Med
Liquidambar Styrciflua	Sweetgum	60-100ft	Fast	Med	High
Liriodendron Tulipifera	Tulip Tree/Yellow Poplar	80-100ft	Fast	Low	Low
Magnolia grandiflora	Southern Magnolia	60-100ft	Med	High	High
Magnolia Virginiana	Magnolia/Sweetbay	40-60ft	Med	Low	Low
Nyssa Slyvatuca	Black Tupelo	50-80ft	Med	Low	Low
Ostrya Virginiana	Eastern Hophorn beam	20-40ft	Med	Low	High
Quercus alba	White Oak	50-80ft	Med	High	Med
Quercus austrina	Bluff Oak	25-40ft	Med	Low	Low
Quercus Chapmanii	Chapman Oak	30-45ft	Slow	Med	High
Quercus Laurifolia	Laurel Oak	60-100ft	Fast	Low	High
Quercus Shumardii	Shumard Oak	40-60ft	Slow	Low	Med

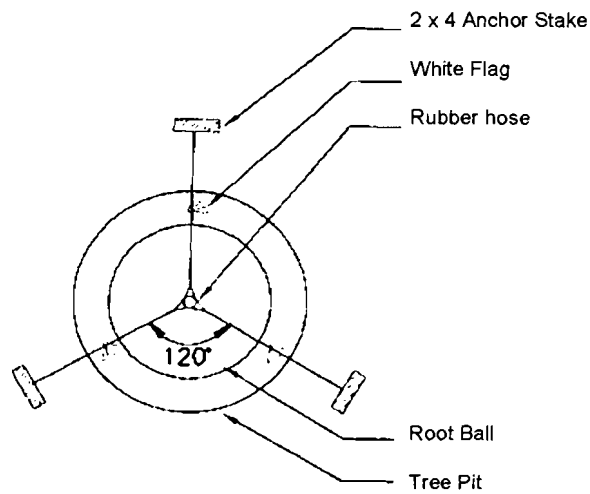
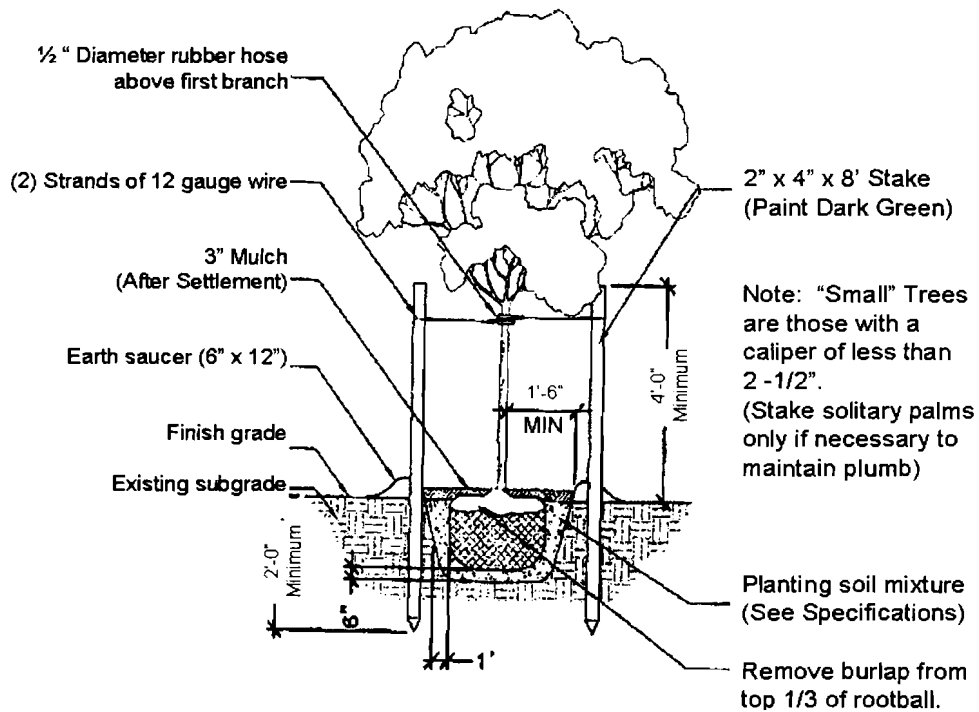
Quercus myrtifolia	Myrtle Oak	10-25ft	Slow	Med	High
Quercus Virginiana	Live Oak	50-60ft	Med	High	High
Taxodium distichum	Bald Cypress	60-100ft	Med	Med	High
Tilia Floridana	Florida Basswood	30-60ft	Fast	Low	Low
Ulmus alata	Winged elm	20-40ft	Med	Low	High
Ulmus Americana	American Elm	80-100ft	Fast	Low	Med

Table 37-2. Supplemental Tree List for Landscaping		
Name	Common Name	Mature Height (ft.)
Pyrus Calleryana	Bradford pear	34-40
Ulmus Parvifolia	Chinese elm	40-50
Magnolia Soulangeana	Saucer magnolia	20-30
Carya Illinoensis	Pecan	70-100
Quercus Michauxii	Swamp chestnut oak	60-70
Ilex Attenuata	East Palatka holly	30-45
Ilex Attenuata	Savannah holly	30-45
Ilex Cornuta	Chinese holly	20-30
Taxodium Ascendens	Pond cypress	60-100
Quercus Nuttallii	Nuttall oak	50-80
Salix Babylonica	Weeping willow	25-30
Myrica Cerifera	Wax myrtle	20-30
Persea Borbonia	Red bay	30-40
Plantanus Occidentalis	Sycamore	70-150

Table 37-3. Minimum Tree Caliper at the Time of Planting	
Existing tree replacement	3 inches
Multi-family and non-residential	3 inches
Single family and community facilities	2 inches



All trees planted shall be staked or guyed for a period of at least six months in accordance with the following planting detail:



Shrubs shall have a minimum height of eighteen (18) inches when planted. When planted as a hedge, the maximum spacing is 30 inches on center.. All shrubs used for visual screening shall be of a plant species that is capable of reaching a height of four (4) feet within twenty-four (24) months under normal growing conditions. Shrubs used as accent ground cover and vines may vary in size depending on the type of plant material and the desired effect.

Groundcovers shall be planted in such manner as to present a finished appearance and complete coverage within one year after planting.

C. Minimum tree planting requirements by use.

1. One and Two Family Dwellings. Each single family and two family lot must provide at least one (1) tree per three thousand (3,000) square feet of lot area for the first quarter acre of lot area. For lots exceeding one-quarter ( 1/4) acre, one (1) tree for every additional one-quarter ( 1/4) acre, or major fraction thereof, must be preserved or planted. Existing canopy trees, sabal palms and pine trees may be used to satisfy this requirement, in whole or in part, provided that they have a minimum caliper of four (4) inches DBH. When trees are planted to meet the minimum requirement they must be more than one species of tree listed in Tables 37-1 or 37-2 and meeting the material standards of this Section. The foregoing represent the entire requirement applicable to individual one and two family dwellings.
2. Multi-family, mobile home park and travel trailer parks. In addition to the use buffer and perimeter landscaping adjacent to a right-of-way requirements found in this Section, each multi-family, mobile home park and travel trailer park must plant or preserve an additional one tree for every two dwelling units. When trees are planted to meet the minimum requirement they must be more than one species of tree listed in Tables 37-1 or 37-2 and meeting the material standards of this Section.
3. Non-residential developments. In addition to the buffer and perimeter landscaping adjacent to a right-of-way requirements found in this Section, each commercial and/or industrial development must provide a minimum of ten (10) percent of the lot or parcel as pervious green space planted with one or more species of tree listed in Tables 37-1 or 37-2 for every five hundred (500) square feet of such green space.

D. Perimeter landscaping adjacent to public rights-of-way:

Except for individual one and two family dwellings, all developments located along a public or private right-of-way shall be required to provide the following landscaping:

1. A1A/S.R. 200, U.S. Highway 1 and U.S. 301. A strip of pervious land adjacent and parallel to the right-of-way line having an average width of twenty five (25) feet and a minimum width of ten feet along the entire street frontage except for permitted driveways. This perimeter landscaping strip shall contain a minimum of three (3) canopy trees per one hundred (100) linear

feet of property frontage. The trees shall consist of more than one species listed in Tables 37-1 or 37-2 and meeting the material standards of this Section. Planted trees are not meant to be spaced evenly but rather randomly distributed by species.

If the required perimeter landscape is left undisturbed (except for authorized driveways and utilities), credit shall also be given for the preservation of pine and palm trees having a minimum 8-inch dbh. Undisturbed shall mean there is no grade change or other disturbance within ten feet of a pine and five feet of a palm. Understory clearing shall be by hand tools only. The area between preserved and planted trees can be supplemented with native or naturalized shrubs to provide required screening adjacent to parking areas.

2. Other arterial and collector roadways. All other arterial and collector roadways, as identified by the Comprehensive Plan, shall provide a strip of pervious land adjacent and parallel to the right-of-way line having an average width of fifteen (15) feet and a minimum width of seven and one-half (7 ½) feet along the entire street frontage except for permitted driveways. This perimeter landscaping strip shall contain a minimum of three (3) canopy trees per one hundred (100) linear feet of property frontage. The trees shall consist of more than one species listed in Tables 37-1 or 37-2 and meeting the material standards of this Section. Planted trees are not meant to be spaced evenly but rather randomly distributed by species within the largest open spaces.
3. Local streets. A strip of pervious land adjacent and parallel to the right-of-way line having a minimum width of ten (10) feet along the entire street frontage except for permitted driveways. This perimeter landscaping strip shall contain a minimum of two (2) canopy trees per one hundred (100) linear feet of property frontage. The trees shall consist of more than one species listed in Tables 37-1 or 37-2 and meeting the material standards of this Section.
4. Sidewalks. Sidewalks may be incorporated within an easement located within a perimeter landscaping strip if the average width is increased by five feet above the minimum required width and if the sidewalk meanders around existing trees.
5. Required screening. Except for one and two family dwellings, all off-street parking areas, drive aisles and paved storage areas lying within 50 feet of, and visible from any street right-of-way, the perimeter landscaping requirement of this Section shall also include shrubs arranged to provide a visual screen of 75% opacity and achieve a minimum height of three feet within three years of

planting.

E. Intersection sight distance clearance

1. At the intersection of two streets, all landscaping within that area defined by the Florida Department of Transportation sight triangle, as outlined in the *FDOT Design Standards for Design, Construction, Maintenance and Utility Operations on the State Highway System* shall be installed and maintained below three feet in height or above eight feet in height.
2. When a driveway intersects a right-of-way, clear unobstructed cross visibility shall be provided within the site triangle formed by such intersection. The sight triangle shall be measured from the point of intersection, fifteen (15) feet along the access way and then fifteen (15) feet along the right-of-way, with the third side being a line connecting the two (2) points. Cross visibility within the sight triangle shall be unobstructed between the height of three (3) feet and eight (8) feet measured from the ground line. Trees and palms shall have their limbs and foliage trimmed in a manner that no limbs or foliage will extend in to the cross visibility area. To ensure proper visibility at the intersection of access ways with public right-of-ways, excluding properly trimmed trees as previously stated; only ground cover type plants shall be allowed within the sight triangle.

F. Interior landscaping regulations:

1. Except for one and two family dwellings, all off-street parking areas shall contain interior landscaping islands at a ratio of one (1) island for each ten (10) parking spaces. Rows of parking spaces abutting a sidewalk adjacent to a building are exempt from required landscape islands except for terminal islands at the end of each row. Such landscaped areas are creditable to the minimum landscape requirements for multi-family, mobile home park, travel trailer park and non-residential developments.
2. Each separate interior landscaped island shall contain a minimum of one hundred sixty six (166) square feet and shall be at least ten (10) feet wide as measured from back of curb. A minimum of one (1) canopy tree shall be planted in each interior landscaping island with the remaining area adequately planted with shrubs, ground cover, or other approved landscaping materials.
3. All interior landscaping shall be protected from vehicle encroachment by curbing or wheel stops.

4. Interior landscaping shall be located in a manner, which will divide or interrupt the broad expanse of paving. Landscaped areas shall subdivide rows of parking spaces into a maximum of ten (10) consecutive spaces. Each group of 10 shall have terminal islands at each end. This maximum may be adjusted to provide for the preservation of existing canopy trees.

#### G. Xeriscape

Xeriscaping (waterwise) is landscaping that conserves water and protects the environment and is adaptable to local conditions and which are drought tolerant. Xeriscape techniques maximize the conservation of water use with site appropriate plants, an efficient watering system, proper planning and design, soil analysis, practical use of turf, the use of mulches (which may include the use of solid waste compost) and proper maintenance. The following water efficient principles should be applied to the landscape plan:

1. All plantings shall be grouped in zones according to water requirements and shall be irrigated in zones separating high water use areas from drought tolerant zones. The zones are as follows:
  - a. High water use zone: A zone containing plants which are associated with moist soils and require supplemental water in addition to natural rainfall to survive. This zone includes most turf grasses.
  - b. Moderate water use zone: A zone containing plants which survive on natural rainfall with supplemental water during seasonal dry periods.
  - c. Low water use zone: A zone containing plants which survive on natural rainfall without supplemental water.
2. Fifty percent of the plants used in all vehicular use area landscape designs should be drought tolerant and located in groupings according to zones designated by the water requirements.
3. Turf grass areas should be consolidated and limited to those areas on the site that receive pedestrian traffic, provide for recreational uses, provide soil erosion control such as berms, slopes and swales, where turf grass is used as a design unifier or other similar practical use.
4. All planting areas shall be mulched with approximately three inches of organic mulch, such as pine bark or shredded hardwood chips.

#### H. Firewise

Landscape within the wildlife/urban interface are subject to wildfire hazard and should incorporate Firewise landscaping techniques. Such techniques include:

1. Creating a defensible space zone around buildings. Such zones shall provide space for fire suppression equipment in the event of an emergency and

progressively limit plantings near structures to carefully spaced fire resistant species.

2. Placing low growing species and groundcovers beneath canopy trees and rooflines to avoid creating a continuous fuel source from ground to tree or roof.
3. Utilizing driveways, lawn areas and walkways to provide firebreaks between large areas of dense vegetation.
4. Selective thinning of fire prone plant species in existing vegetation areas to reduce fuel loads. A list of fire prone species is available from the Division of Forestry.

#### I. Prohibited trees

The following tree species are expressly forbidden from being planted or used as required or supplemental landscaping material. Invasive non-native vegetation in general is a public nuisance that degrades landscaped and natural areas. On a case by case basis, the County may provide credit against required landscaping if existing stands of mature prohibited trees are completely removed.

Schinus terebinthifolius	Brazilian pepper
Casuarina spp.	Australian pine
Melaleuca quinquinervia	Australian paperbark
Sapium sebiferum	Chinese tallow
Mimosa pigra	catclaw mimosa
Cupaniopsis anacardioides	carrotwood

#### J. Maintenance

The property owner is responsible for the maintenance of all landscape areas required by this section. Maintenance includes irrigating, mowing, trimming, fertilizing and carrying out those activities necessary to keep the plant material in a healthy and growing condition, maintain visual clearance and allow passage of vehicles and pedestrians on public roads and non-exclusive easements.

1. Upon determination by the County that a required tree or plant is dead or severely damaged or diseased, the tree or plant shall be replaced by the owner with plant material meeting the requirements of this Section.
2. All buffer areas required as part of a development plan, whether in common or private ownership, shall be the responsibility of that development's property owners' association. Where there is no property owners' association, such landscaped areas shall be the responsibility of the property owner.
3. Trees on developed properties may be pruned to maintain shape and promote their shade-giving qualities. They should be pruned to remove diseased or dying portions in areas where falling limbs could be a hazard to people or

property. Lower limbs may be removed to provide clearance. In addition, trees located in association with vehicular use areas shall also be pruned to allow a seven-foot clearance from ground level to avoid potential for damage or injury to pedestrians and cleared to thirteen (13) above pavement level for vehicles. However, the excessive pruning or pollarding of trees into round balls of crown or branches resulting in an unnecessary reduction of shade is prohibited and may require supplemental plantings. All pruning shall be done following the American National Standard for Tree Care Operations "Tree, Shrub and Other Woody Plant Maintenance - Standard Practices."

### **37.06 Buffers Between Certain Uses**

Landscaped buffers shall be provided in accordance with this Section where certain uses directly abut one another. For the purpose of this Section, directly abutting means a shared property line or non-contiguous properties separated by a private roadway or waterway located within a right-of-way or easement less than sixty feet in width.

1. General provisions.
  - a. Landscaped buffers shall be located along the property line of the property to be developed extending inward.
  - b. The minimum required landscaped buffer within a residential development may be included within an individual building lot but must be supplemental to the minimum setback and area requirements of the district in which it is located. Non-residential sites may incorporate the buffer within lots and count it toward setback and open space requirements.
  - c. Except for a pedestrian crossing, no parking, paving or structures are permitted within the required landscape buffer. This limitation does not extend to underground utilities, hydrants and valve assemblies, pedestal boxes and incidental ground signs that do not interfere with required plant material.
  - d. Landscape buffers may include portions of the stormwater management system only upon a demonstration by the Applicant that the character and intent of the buffer is not compromised. As a maximum, not more than 20 % of the buffer will be available for dry retention/detention. Where a pre-existing wetland is incorporated within the buffer this limitation may be waived.
2. Minimum landscape buffer types required on abutting property boundaries between uses are shown in Table 37-5 below. When both properties are developed in accordance with this Section, the required buffers are additive. By way of illustration, the entire buffer between a single-family subdivision and an office park will be a minimum of 20 feet, with 10 feet on each side of the common property line. If an adjacent property is vacant, its use shall be

based upon its Future Land Use Map designation. If the Future Land Use Map and existing use of the property are inconsistent, the buffer requirement will be based upon whichever use results in a more intensive buffer.

Proposed Use of Subject Property		One or two-family dwelling(s)	Multi-family dwelling(s)	Institutional (churches, schools, etc.)	Neighborhood commercial	All other Commercial	Industrial
Timber-leased	None	None	None	None	None	None	None
One or two-family dwelling(s)	None	None	L	L	L	M	M
Multi-family dwelling(s)	None	M	None	M	M	M	M
Institutional (churches, schools, public buildings, etc.)	L	L	L	None	L	M	M
Neighborhood commercial, office park	L	L	L	L	None	L	L
All other Commercial	L	H	M	H	M	None	None
Industrial	M	H	H	H	M	L	None

Key to buffer types: See Table 37-6

3. Minimum buffer width and planting specifications for required buffer types are indicated in the following table.

Buffer type from Table 37-5	Minimum Width	Plant Material per 100 l.f.		Screening
		Canopy Trees	Shrubs	
L=Low Density	10 feet	3	67	No
M=Medium Density	15 feet	4	67	Yes
H=High Density	25 feet	5	90	Yes

4. Buffer landscaping and screening
- Medium and fast growing canopy trees shall be chosen from Table 37-1 having a dense, evergreen crown to provide maximum visual separation between abutting properties.
  - Shrubs shall be spaced to provide a natural appearance and inhibit free movement of pedestrian traffic except at a mutually agreed upon pedestrian connection. Where screening is proposed consisting of a fence or wall, shrubs are not required.
  - Where screening is required, it shall consist of one or more of the following materials:



1. A five foot masonry wall stuccoed on the side facing the abutting property.
2. A six foot fence creating at least 75% opacity and constructed of resistant materials such as vinyl, cypress or pressure treated wood.
3. Existing dense vegetation.
4. A berm three feet in height located entirely within the buffer and having the requisite number of shrubs planted along the crown.

### **37.07 Beachfront Lighting Restrictions For The Protection Of Sea Turtles**

#### A. Purpose and Definitions.

The purpose of this section is to protect the threatened and endangered sea turtles which nest along the south beaches of Nassau County, Florida, by safeguarding the hatchlings from sources of artificial light. For the purpose of this article, the following terms shall have the meaning set forth in this section:

*Artificial light:* Any source of light emanating from a man-made device, including, but not limited to, incandescent mercury vapor, metal halide or sodium lamps, spotlights, street lights or security lights. This shall not include vehicular lights or flashlights.

*Beach:* That area of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form or to the line of permanent vegetation (usually the effective limit of storm waves) or revetment as is defined in Chapter 1633-33, Florida Administrative Code.

*Coastal construction control line (CCCL):* The Nassau County Coastal Construction Control Line as depicted on the State of Florida Department of Natural Resources, Division of Beaches and Shores maps.

*Floodlight:* Reflector type light fixture which is attached directly to a building and which is unshielded.

*Ground level barrier:* Any natural or artificial structure rising above the ground which prevents beachfront lighting from shining directly onto the beach dune system.

*Lot profile luminaire:* A light fixture set on a base which raises the source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.

*New development:* Shall include new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.

*Person:* Any individual, firm, associate, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county or municipal government.

*Pole lighting:* Light fixture set on a base or pole which raises the source of the light higher than forty-eight (48) inches off the ground.

*Shading coefficient:* A coefficient expressing that percentage of the incident radiation which passes through the window as heat.

*Solar screen:* Screens which are fixed installations and permanently project shade over the entire glass area of the window. The screens must be installed outside of the glass and must:

1. Have a shading coefficient of .45 or less;
2. Carry a minimum five-year warranty; and
3. Must have performance claims supported by approved testing procedures and documentation.

*Tinted or filmed glass:* Window glass which has been covered with window tint or film such that the material has:

1. A shading coefficient of .45 or less;
2. A minimum five-year warranty;
3. Adhesive as an integral part; and
4. Performance claims which are supported by approved testing procedures and documentation.

#### B . Regulations governing beachfront lighting in new development.

It is the policy of the Board of County Commissioners that no artificial light illuminate any area of the unincorporated beaches of Nassau County, Florida. To meet this intent, building and electrical plans for construction of single-family or multi-family dwellings, commercial or other structures including electrical plans associated with parking lots, dune walkovers or other outdoor lighting for real property if lighting associated with such construction or development can be seen from the beach, shall be in compliance with the following:

- (1) Floodlight shall be prohibited. Wall mounted light fixtures shall be fitted with hoods so that no light illuminates the beach.
- (2) Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy-three (73) degrees on the seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.
- (3) Low profile luminaries shall be used in parking lots and such lighting shall be positioned so that no light illuminates the beach.
- (4) Dune crosswalks shall utilize low profile shielded luminaries.
- (5) Lights on balconies shall be fitted with hoods so that lights will not illuminate the beach.
- (6) To prevent interior lights from illuminating the beach, window treatment shall be required on all windows of single or multi-story structures, if those windows are within the line of sight of the beach and where no ground level barriers exist. Blackout draperies or shade screens are preferred. Alternatively, window tint may be applied to beach front windows. The turning out of all unnecessary interior lights during the nesting season is encouraged.
- (7) Temporary security lights at construction sites shall not be mounted more than fifteen (15) feet above the ground. Illumination from the lights shall not spread beyond the boundary of the property being developed, and in no case shall those lights illuminate the beach.

C. Existing development. It is the policy of the Nassau County Board of County Commissioners that no artificial light illuminate any area of the unincorporated beaches of Nassau County, Florida. To meet this intent, lighting of existing structures which can be seen from the beach shall be in compliance with the following minimum standards:

1. Lights illuminating building or associated ground for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, during the period of May 1 to October 31 of each year.
2. Beach access points, dunes crossovers, beach walkovers, piers or any other structure on or seaward of the primary dune designed for pedestrian traffic shall use the minimum amount of light necessary to ensure safety.
3. Pedestrian lighting shall be of low intensity and recessed or shielded so that the source of light is not directly visible from the beach.
4.
  - a. Security lighting shall be permitted throughout the night so long as low profile luminaries or effective alternatives are used and screened in such a way that those lights do not illuminate the beach.
  - b. Fixtures for security purposes that contain high intensity lights shall be designed and/or positioned such that they do not cause direct illumination of areas seaward of the primary dune and the source of light is not directly visible from the beach.
5. Tinted or filmed glass shall be used in windows facing the ocean above the first floor of multi-story structures where no natural barriers exist in order that no light illuminate the beach. Shade screens or blanket draperies can be substituted for this requirement.
6. Existing artificial light sources shall be repositioned, modified or replaced with alternatives so that the source of light is not directly visible from the beach and/or does not directly illuminate areas seaward of the primary dune. Techniques and/or materials used shall be consistent with standards set forth in Chapter 62B-55, F.A.C., *Model Lighting Ordinance for Marine Turtle Protection*, available for review at Growth Management department office.

D. Publicly-owned lighting. Street lights and lighting at parks and other publicly-owned access areas shall be subject to the following:

1. Whenever possible, street lights shall be located so that the bulk of their illumination will travel away from the beach. The light shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.
2. Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period of May 1st to October 31st of each year.

E. Enforcement and penalty. It is unlawful for any person to violate this article. A violation of any section of this article shall subject the violator to a penalty, upon conviction, of up to five hundred dollars (\$500.00). The board may further bring suit to restrain, enjoin or otherwise prevent the violation of any section of this article and shall be entitled to reasonable attorney's fees when it prevails in the suit.

### **37.08. CANOPY/SCENIC ROADS**

A. Designation. The Board of County Commissioners may designate roads or portion of said roads as scenic/canopy roads, by ordinance, based upon criteria set forth herein. The Growth Management Department may recommend, based upon the criteria, that roads or portion of said roads be considered, or a petition of the lesser of either of fifty-one (51) percent or two hundred (200) of the property owners abutting the road may request that a road be considered. Said petition shall be submitted to the Growth Management Department for review and comment, and a report made to the board of county commissioners. The criteria shall include: (1) historic significance; (2) scenic criteria (including tree canopy); (3) ecological significance; (4) length and current width; (5) land use map designation; (6) zoning of the property within the area; (7) traffic information.

The Planning Director, or his/her designee, shall insure that the trees are identified and recorded on the proposed roadway and zone, and present the information to the Board of County Commissioners for its approval. The identification and recordation shall be in a form that can be attached to an ordinance.

The Board of County Commissioners shall designate said road by adoption of an ordinance. Said ordinance shall reference the exact method by which the trees were identified and recorded. Said information may be attached to the ordinance, when possible, or stored by the Growth Management Department. Any ordinance proposing to designate a roadway shall be considered by the Planning and Zoning Board after mailed, published and posted public notice. The Planning and Zoning Board shall conduct a public hearing and make recommendations to the Board of County Commissioners. The Board of County Commissioners shall consider the recommendations pursuant to the procedural requirements of this Land Development Code. Mailed notice shall be provided at least twenty (20) days prior to the public hearing.

#### **B. Restrictions on scenic/canopy roads.**

1. The county shall not widen or increase the number of lanes on any of the county roads designated as scenic/canopy roads.
2. Outdoor advertising signs shall be prohibited, except signs advertising residential developments or homes for sale or parcels of property immediately adjacent to the road or subdivision and entryway signs constructed in accordance with the county sign ordinance. On-premises commercial signs, excluding billboards, shall be allowed.
3. The erection of markers or signage indicating that the road is a scenic/canopy road or historic road shall only be accomplished at the

direction of the growth management coordinator or his/her designee with the consent of the board of county commissioners.

4. Setting and posting of speed limits and warning of restricted roadway shoulders.
5. Setting of classes of vehicular travel, including weight and height limitations.
6. Limiting access and width of access.
7. Tree protection. No trees, except as identified in Florida's Most Invasive Species List, Category I, which have attained a diameter of eight (8) inches or more at a point four and one-half (4 1/2) feet above average ground level within the zone shall be removed, except as provided herein, and trees shall be identified as set forth herein.

C. Scenic/canopy road zone. The zone should be established by the Board of County Commissioners. The zone shall include the right-of-way as established by the growth management department and may include additional area of uniform width along the roadway based upon the zoning classification, including setback requirements, trees as depicted on the survey, and location of existing structures. The zone shall be set forth in the proposed ordinance and included on the notification sent pursuant to section 25-61(c). No development shall occur within the approved zone of the canopy road without the express approval of the board of county commissioners and a request for development shall be submitted to the growth management coordinator or his/her designee, and the coordinator or his/her designee shall provide a recommendation to the board of county commissioners. Said recommendation may contain conditions, and the recommendations shall be placed on the board's agenda and the procedures utilized for public hearing as set forth herein.

D. Criteria for tree removal.

1. The growth management coordinator or his/her designee shall recommend approval to the board of county commissioners of a permit for removal of a tree within the zone if the applicant demonstrates the presence of one (1) or more of the following conditions:
  - (a) *Safety hazard.* Necessity to remove a tree which poses a safety hazard to pedestrians or other persons, buildings, or other property, or vehicular traffic, or which threatens to cause disruption of public services.
  - (b) *Diseased or pest-infested trees.* Necessity to remove a diseased or pest-infested tree to prevent the spread of the disease or pests.
  - (c) *Good forestry and environmental practices.* Necessity to reduce competition between trees and deter the spread of invasive non-native plant and tree species.
  - (d) *Reasonable and permissible use of property.* Tree removal which is essential for reasonable and permissible use of essential improvements, resulting from:
    1. Need for access immediately around the proposed structure for essential construction equipment, limited to a maximum width of twenty (20) feet from the structure.
    2. Limited access to the building site essential for reasonable use of construction equipment.

3. Essential grade changes. Essential grade changes are those grade changes needed to implement safety standards common to standard engineering or architectural practices, and reference to a text where such standards are found shall be required.
  4. Location of driveways, buildings, or other permanent improvements. Driveway aisles shall be consistent with other applicable standards.
2. The board of county commissioners shall approve or deny a permit request, and said request shall be considered at a regularly scheduled meeting of the board of county commissioners. Notice shall be provided to property owners within the zone in the same manner as set forth in section 25-63.
  3. The individual(s) requesting the permit shall pay an application fee of one hundred fifty dollars (\$150.00) and shall be responsible for notifying the property owners, and the cost of the advertisement(s).

E. Removal of any tree or trees. The board of county commissioners, when approving removal of any tree or trees within the zone, shall direct the growth management coordinator to amend the identification of the trees, updating and showing the location of the trees permissibly removed, and including the location of any mitigation trees arising from or in connection with a tree removal and shall be so indicated in the minutes of the next regularly scheduled board meeting. No liability or fine shall be levied for trees removed from within the zone if the identification is not maintained current within thirty (30) days of amending action by the board of county commissioners.

F. Removal applications.

1. *Required information.* All permits for removal or relocation of trees, or for pruning management, within the canopy road tree protection zone (unless such activity is permitted under an approved general permit, shall be obtained by making application to the planning director or his/her designee. Permit forms shall be promulgated by the growth management coordinator or his/her designee and approved by the board of county commissioners.
2. *Mitigation requirements.* The permit application for removal of trees or vegetation in the canopy road tree protection zone must be accompanied by a mitigation plan which shall include, at a minimum, the following:
  - a. An analysis documenting the purpose that necessitates the tree removal and explaining why the project cannot be modified to avoid the need for tree removal.
  - b. An analysis of the canopy road section to be impacted by the proposed activity within the canopy road tree protection zone. The analysis shall include a narrative description of the affected roadway section together with other material helpful in assessing the impact of the intrusion of the existing canopy road effect. Such characteristics as under-brush density and species composition, tree species and size distribution, high bank areas, and capacity shall be included as appropriate.
  - c. A replanting and management plan designed to mitigate the visual and vegetation impacts.

3. *Inspection.* Prior to determination on a permit application, the growth management coordinator or his/her designee, shall conduct an on-site inspection.
4. *Appeal.* Any permit that is denied may be appealed to the board of county commissioners within thirty (30) days of the date of denial by filing a request with the clerk of the court's office.

G. Traffic safety regarding canopy road designation. Traffic safety on the designated canopy road shall be promoted by the utilization of speed control devices and by limiting truck traffic to local delivery trucks and setting speed limits. The engineering services director or his designee shall provide speed control devices and signage restrictions as deemed necessary.

H. Traffic directional signs. The engineering services director or his/her designee may recommend to the board of county commissioners that traffic, other than local vehicular traffic, be routed on canopy roads upon providing information that:

1. The road has been previously utilized for non-local traffic.
2. The routing of other than local traffic does not create safety concerns or adversely affect the canopy road.
3. There is a need and necessity to route other than local traffic.
4. Said recommendations shall be placed on the board's agenda and considered at a meeting commencing at 6:00 p.m.

I. Appeal. Any decision of the planning director or engineering services director or his/her designee that does not require approval of the board of county commissioners may be appealed to the board of county commissioners. Any and all such appeals shall be in writing and provided to the county administrator's office at least fourteen (14) days prior to the next regularly scheduled board of county commissioners' meeting. Said appeal shall be placed on the agenda for consideration by the board of county commissioners.

J. Violation. Any person, firm, or corporation who refuses to comply with or violates any provision of this section shall be punished according to law, and upon conviction for such offenses, shall be punished by a fine, not to exceed five hundred dollars (\$500.00), or for tree removal not to exceed five hundred dollars (\$500.00) per tree, or by imprisonment, not to exceed sixty (60) days in the county jail, or both. Each day of continued noncompliance or violation shall constitute a separate offense.

K. Conflict. In the event of conflict between this section and other county ordinances as adopted, this article shall prevail.

### **37.09 Historic and Archaeological Protection**

#### A. Intent. The intent of these regulations is to:

1. Protect and perpetuate the natural and cultural heritage of significant historic and/or archaeological sites and structures, including historic roads in the county;
2. Enhance historic and archaeological resources, and their property value, for the benefit, education, and enjoyment of future generations;
3. Protect the public interest in historic and/or archaeological sites, structures, or roadways from adverse activities, land uses, excavations, construction, destruction and other impacts and encroachments;
4. Prevent the unnecessary removal of historic structures or archaeological artifacts;
5. Stabilize and improve property values, while providing attractions to residents, tourists and visitors, a stimulus to business and industry and a mode to preserve the history of Nassau County; and,
6. Implement the policies of Objective 1.04B of the Future Land Use Element and Objective 3.06 of the Housing Element of the adopted Nassau County Comprehensive Plan.

#### B. Prohibited activity.

1. Within Nassau County, it shall be unlawful for any person, group, organization or agency to knowingly and/or willfully damage, alter, destroy, deface, renovate, relocate, excavate or otherwise disturb any historic or archaeological resource without prior and appropriate notification to Nassau County, and authorization from any additional county, state or federal regulatory agency with applicable jurisdiction as required.
  - a. These regulations shall not be construed to prevent ordinary repairs or maintenance to a structure or site.

#### C. Nominations, designations and appeals.

1. *Nominations.* The property owner, local county organization, the board of county commissioners or authorized agency of the U.S. Government and/or the State of Florida may nominate a property for historic designation. Any private property designated shall have the consent of the property owner.
  - a. Nominations for historic designation shall be submitted to the growth management department and shall be accompanied by any information necessary, as requested by the growth management department, to investigate and comment on the nomination, and pursuant to chapter 1A-46.0001, Florida Administrative Code and chapter 60.4, Code of Federal Regulations, as applicable and amended from time to time.
  - b. The growth management department shall review all nominations for historic designation, and provide additional information, comments and recommendations to the board of county commissioners.



- c. The administrative, public notification procedures and fee schedule used for an application for rezoning, subject to the provisions herein and pursuant to this land development code, shall apply.
    - d. Upon nomination for historic designation involving human burial remains, all issued or pending permits pertaining to the affected portion of the subject property shall be suspended, and no new permits shall be issued or reinstated for a period of up to fifteen (15) consecutive days or until a final report is received from the state archaeologist or district medical examiner.
  2. *Designations.* The board of county commissioners will hold public hearings to consider nominations for historic designation. The board of county commissioners may, upon a majority vote, designate an area, site, artifact, excavation, structure or other resource as historical, and regulated by the provisions herein. Any private property designated shall have the consent of the property owner. Such designation shall confer upon applicable structures or properties an acknowledgement of local historic significance.
    - a. The county shall develop a historic properties survey of Nassau County, Florida, which shall be updated periodically. The historic properties survey of Nassau County, Florida shall be administered and maintained by the growth management department and geographical information systems department, in accordance with policy 1.04B.01 of the Comprehensive Plan.
  3. *Appeals.* Any person jointly or severally aggrieved by a decision of the board of county commissioners concerning the designation of historic resources within Nassau County may file an appeal in the circuit court, which serves the county in which the board of county commissioners is located. This appeal must be filed within thirty (30) days after the board of county commissioners has rendered its decision.
    - a. Upon any appeal of the board's decision, the board of county commissioners may continue the suspension of all activities and permits within that portion of the site associated with the historic or archaeological resources in question, pending a final decision or agreement between the board and the subject property owner(s) or a rendering of a decision of appeal.

#### D. Exemptions.

1. Duly authorized agents of the State of Florida or the federal government, or organizations authorized by the board of county commissioners conducting bona fide scientific surveys, investigations, excavations or explorations for the purpose of identification, protection, or exhumation of historical resources of Nassau County, may be exempted from the provisions of these regulations, provided such exemptions are deemed by the board of county commissioners to be in the best interest of the citizens of Nassau County, the State of Florida or the Nation.
2. In circumstances of emergency or impending disaster, the provisions herein shall in no way impede or restrict the performance or duties of any authorized emergency personnel with proper jurisdiction in Nassau County. In addition, the county building official will have the authority to issue emergency demolition and/or construction permits for any historic or potential historic resource that

possesses an immediate or obvious threat to the health, safety and welfare of the citizens of Nassau County, subject to the approval of the board of county commissioners and in accordance with the provisions of the Florida Building Code.

3. Any designated historical resource that has been destroyed or damaged by a natural disaster, and is deemed by the county building official as an immediate threat or obvious threat to the health, safety and welfare of the citizens of Nassau County, may have its historic designation status rescinded upon a majority vote by the board of county commissioners.

E. Archaeological protection.

1. *Archaeological survey requirement.* Within Nassau County, any person(s), company, organization or government agency engaged or promoting activities which unearth, uncover, or otherwise reveal any suspected archaeological site, burial, artifact, or other remains, is required to notify the Nassau County Growth Management Department as to the nature, size and exact location of the suspected find.
2. *The growth management department* will have authority to request from an applicant/developer an initial archaeological survey by an authorized agency or qualified archaeologist before development occurs in any area known or documented to contain historic resources.
  - a. If the presence of historic resources is confirmed, all activities, permits and/or exemptions associated with that portion of the subject site will be temporarily suspended for a period of three (3) working days, or until initial site inspection, subsequent evaluation and site-release to continue work is issued by the growth management department, whichever occurs first. However, following the initial site inspection, if human burial remains are found, the growth management department will have authority to temporarily suspend for up to fifteen (15) consecutive days all activities, permits and/or exemptions concerning the subject site, or until a subsequent inspection and evaluation is conducted by a representative of a qualified agency with experience in archaeological identifications or the medical examiner. Any archaeological sites, artifacts, remains or other resources deemed "major" by an authorized agency or qualified archaeologist will be reported to the board of county commissioners, which will have the authority:
    1. To request that the property owner conduct a comprehensive scientific excavation and evaluation of the site by [and] under the direction of a bona fide archaeologist;
    2. To determine the nature, importance and possible preservation and/or protection of the known or suspected archaeological remains;
    3. To review for consistency all proposed mitigation procedures and potential adverse impacts to the subject site;
    4. To request that the property owner file a variance request to ensure archaeological protection of the site and reasonable use of the land by the property owner; or,
    5. To determine potential public acquisition for archaeological preservation.

- b. Archaeological sites designated as "minor" by an authorized agency or qualified archaeologist shall receive salvage excavation prior to development recommencing.
3. *Excavations.* All subsequent excavations, removals, preservations, designations, displays or mitigations concerning a potential, known, or designated archaeological site, must be approved by the board of county commissioners upon recommendation by the growth management department and/or the appropriate state or federal authorities.
  - a. All approved excavations shall be in strict accordance with the recommendations, permits, approvals or authorizations of the board of county commissioners and/or any appropriate state or federal agency with jurisdiction.
4. *Human burials.* According to chapter 872, Florida Statutes, it is a third degree felony for persons who willfully and knowingly disturb any human burial remains. Any person who knows or has reasons to know that an unmarked human burial is being unlawfully disturbed, destroyed, defaced, mutilated, removed, excavated or exposed shall immediately notify the local law enforcement agency with jurisdiction in the area where the unmarked human burial is located. Persons with knowledge of the disturbance who fail to notify the local law enforcement agency will be guilty of a misdemeanor of the second degree. All subsequent actions concerning the subject human burial shall be in compliance with chapter 872, Florida Statutes.

F. Historic properties, sites and structures.

1. Minimum criteria for designation. Any historic resource included or eventually added to the historic properties survey of Nassau County, Florida, the National Register of Historic Places, Florida Master Site File, or any other appropriate and recognized existing or future survey by an authorized agent of the local, state or federal government, shall be subject to the provisions herein. All deletions, additions or amendments to the historic properties survey or other authorized surveys, maps or lists shall be subject to the processes, criteria, reviews and approvals as outlined in these regulations.
2. The following minimum criteria shall be utilized when evaluating a structure, district, site or other resource for designation as an historic resource or for inclusion in the historic properties survey.
  - a. The considered historic resource must be a minimum of fifty (50) years old and contain significant character, interest, or value as part of the historical, cultural, aesthetic and architectural heritage of Nassau County, its municipalities, the surrounding counties, the state, or the nation. General evaluation criteria shall include the significance and association of the building with the way of life or activities of a major person, location, event, family, business or institution recognized as important to the county, its municipalities, the surrounding counties, the state, or the nation; or
  - b. The considered historic resource displays the historical, political, cultural, economic or social trends of community history; or

- c. The considered designation displays unique and/or distinguishing characteristics of an architectural style, design period, method of construction, detail, craftsmanship or material; or
- d. The considered historic resource is a historic or outstanding work of a prominent architect, designer, engineer, builder or landscape architect; or
- e. The site, building or structure meets the historic development standards as defined by, and listed in the regulations of, and criteria for, the National Register of Historic Places, as prepared by the U.S. Department of the Interior, under the Historic Preservation Act of 1966, as amended.

G. Nonconforming historic properties. The planning and zoning board, pursuant to the procedures for granting a variance and subject to the provisions herein, may grant a variance for the reconstruction, rehabilitation or restoration of structures listed, eligible for listing or classified as contributing to a district listed on the national registry of historic places, or the Florida Master Site File. The variance shall be the minimum necessary to protect the historic character and design of the structure. No variance shall be granted if the proposed construction, rehabilitation, or restoration will cause the historic character or design of the structure to be degraded or destroyed.

H. Enforcement. Any person(s), agencies, or companies who carry out or cause to be carried out any work, activity, or disturbance in violation of this ordinance shall be required to restore the subject historic resource or disturbed portion of the site either to its former appearance and/or condition prior to the violation, or in accordance with the recommendations of the board of county commissioners.

#### **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 Land Development Code (LDC) of Nassau County, Florida. The codifier may re-letter or renumber sections to conform to the uniform numbering and style of the LDC.

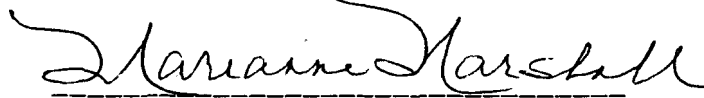
#### **SECTION 5. SEVERABILITY**

It is the intent of the Board of County Commissioners of Nassau County, Florida, 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**

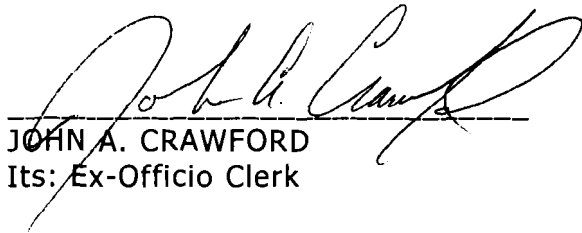
This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA



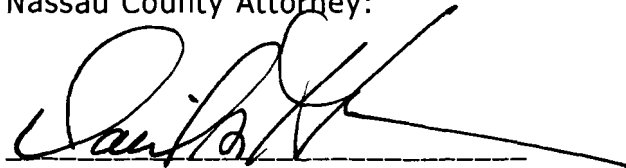
MARIANNE MARSHALL  
Its: Chair

Attest as to Chair's  
Signature:



JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney:



DAVID A. HALLMAN  
Its: County Attorney