

CHAPTER A. TREE PRESERVATION AND SOIL STABILIZATION

SECTION 1. GENERAL

(A) Goals. The goals of this Chapter are:

- (1) To avoid the unnecessary destruction of native vegetation;
- (2) To pursue eradication of invasive non-native vegetation;
- (3) To minimize adverse impacts to native vegetation during parcel improvements;
- (4) To mitigate the removal of native vegetation; and
- (5) To protect exposed and disturbed soils from stormwater or wind forces.

(B) Purpose. This Chapter shall:

- (1) Establish a program to preserve and protect native vegetation;
- (2) Prohibit unnecessary destruction of native vegetation;
- (3) Establish the standards for the eradication of invasive non-native vegetation;
- (4) Establish the standards to mitigate for the removal of native vegetation; and
- (5) Establish the standards to prevent siltation and sedimentation from disturbed and exposed soil surfaces.

(C) Applicability.

- (1) This Chapter shall apply within the corporate boundaries of the Town of Loxahatchee Groves, Florida, hereinafter referred to as the “Town”.
- (2) The Town shall have regulatory authority over the alteration, abuse or removal of non-native and native upland vegetation, and the stabilization of exposed soil surface areas.
- (3) No person may alter or cause to be altered any vegetation unless such alteration is exempted by, or expressly approved by this Chapter.
- (4) The provisions of this Chapter may be suspended or waived by the Town Manager during a period of officially declared emergency, such as a hurricane, windstorm, tropical storm, flood, wildfire or similar disaster.

(D) Authority. This Chapter is adopted under the authority of Chapter 166, Florida Statutes, as amended. The Town shall administer the requirements of this Chapter.

SECTION 2. DEFINITIONS

For the purpose of this Chapter the definitions in this Chapter shall apply unless the context clearly indicates or requires a different meaning. In construing the provisions of this Chapter, if no definition is provided herein and when context will permit, publications recognized as authoritative in the scientific and engineering fields shall apply. Such publications shall include: “*Dig Manual*” by the State of Florida, “*ANSI A300-Trees, Shrubs and Other Woody Plant Maintenance-Standard Practices*” by the American National Standards Institute, “*Grades and Standards for Nursery Plants-Parts I and II*” by the Florida Department of Agriculture, and Chapter 62 of the Florida Administrative Code.

Clear Trunk. The distance between the top of the root ball along the vertical trunk or trunks of a tree to the point at which lateral branching or fronds begin.

Champion Tree. Is the largest tree of its species within the state as recognized by the Florida Department of Agriculture’s Division of Forestry based on trunk circumference, vertical tree height, and average crown spread.

Crown Spread. The average distance of the diameter of the extent of the upper portion of a tree, consisting of limbs, branches, and leaves

Diameter Breast Height (DBH). The diameter, in inches, of the trunk of a tree measured at a height of 4½ feet above the natural grade (breast height). The DBH of trees with multiple trunks shall be the sum of the individual trunk diameters at breast height. Trees with less than 4½ feet of clear trunk shall be measured as the diameter of the largest vertical branch or leader at breast height.

Effectively Destroy. To cause, suffer, allow, or permit any act which will cause a tree to die or go into a period of unnatural decline within a period of one year from the date of the act. Examples of such acts may include but are not limited to:

- (1) Girdling of trees by improper guying, staking, support, string trimmers, or non-removal of planting materials from root balls.
- (2) Introduction of any type of poison or reactive material for the purpose of causing the tree to die or become diseased.
- (3) Placement of excess materials or soils within the tree drip line causing the death or disease of the tree.
- (4) Peeling or stripping of bark to the extent that if a line is drawn at any height around the circumference of the tree, over one-third of the length of the line falls on portions of the tree where bark no longer remains.

Invasive Non-Native Vegetation. For the purposes of this chapter, Table A-1. identifies those species that are recognized as invasive non-native vegetation within the Town.

Table A-1. INVASIVE NON-NATIVE VEGETATION	
SCIENTIFIC NAME	COMMON NAME
<i>Acacia auriculiformis</i>	Earleaf acacia
<i>Ardisia elliptica</i>	Shoebuttton ardisia
<i>Bischofia javanica</i>	Bishopwood
<i>Casuarina equisetifolia</i>	Australian-pine
<i>Casuarina glauca</i>	Auckering Australian-pine
<i>Cupaniopsis anacardioides</i>	Carrotwood
<i>Lygodium japonicum</i>	Japanese climbing fern
<i>Lygodium microphyllum</i>	Old World climbing fern
<i>Melaleuca quinquenervia</i>	Melaleuca, Paper bark
<i>Schinus terebinthifolius</i>	Brazilian pepper
<i>Syzygium cumini</i>	Jambolan plum, Java plum

Land Clearing. The indiscriminate removal of trees, shrubs, and/or undergrowth by stripping or any other process, with the intention of preparing real property for development purposes. This definition shall not include the selective removal of non-native tree and shrub species when the soil is left relatively undisturbed, the removal of dead or nuisance trees; or normal mowing operations.

Mulch. Non-living organic material customarily used in landscape design to retard erosion, retain moisture and control weeds.

Jurisdictional Wetland. A jurisdictional wetland, as defined in subsection 373.019(25) of the Florida Statutes, as may be amended, is those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils

SECTION 3. PERMITTED, EXEMPT AND PROHIBITED ACTIVITIES

(A) General Permit. A General Permit is required for upland land clearing that does not qualify for an exemption under this Chapter.

- (1) Tree mitigation, as specified in this Chapter, shall be required for all work conducted under a General Permit.
- (2) In conjunction with the construction of any structure, a General permit also requires the removal or eradication of invasive non-native vegetation for the area of the authorized site plan extending out from the structure a distance of 40 feet. The parcel owner shall thereafter maintain this area free of invasive non-native vegetation.

(B) Exempt Activities. The following activities do not require a permit under this Chapter.

- (1) Vegetation alteration associated with Botanical Gardens, Botanical Research Centers, Licensed Commercial Nurseries, or Bona fide Agricultural Operations that is a part of the on-going activities of the existing operation including the maintenance and upkeep of agricultural and pasture lands. Initial clearing of a parcel is not an exempt activity.
- (2) The minimal removal of trees or understory necessary to install a fence, provided that the path cleared for the fence does not exceed five feet in width or traverse a jurisdictional wetland.
- (3) The removal of dead and dying vegetation or vegetation that constitutes a peril to life or property.
- (4) Wetland mitigation or enhancement activities conducted pursuant to a permit from the South Florida Water Management District or the Florida Department of Environmental Protection under Chapter 62-312, F.A.C. as amended.
- (5) Alteration of vegetation pursuant to an adopted management plan for government maintained parks, recreation areas, wildlife management areas, conservation areas and preserves, excluding new construction or parcel improvement.
- (6) Pruning of native vegetation in accordance with the American National Standards Institute (ANSI) A300, to allow for healthy growth, to promote safety, and to remove dead or dying vegetation.
- (7) Routing maintenance mowing operations of sodded areas that are regularly maintained and “bush hog” type mowing operations.
- (8) Pruning and removal of vegetation within a utility easement, for maintenance and where the vegetation is interfering with services provided by a utility. Including public utility, water control, water management, and road right-of-way activities within utility and drainage easements.
- (9) The necessary removal of vegetation by, or at the direction of, a State of Florida licensed professional surveyor and mapper, professional geologist, or professional engineer to conduct a survey or other required test, provided that no tree three inches or greater DBH is removed, the path cleared does not exceed five feet in width.
- (10) Management activities in areas designated by deed restriction, plat, restrictive covenant, or conservation easement dedicated to a public entity or approved private conservation group for preservation in perpetuity, provided the activity furthers the natural values and functions of the ecological communities present, such as clearing firebreaks for prescribed burns or construction of fences; and the preserve area has a preserve management plan approved by the Town, or another governmental entity.
- (11) Selective tree removal for forest management activities as defined in the current Forest Management Plan as approved by the State of Florida Division of Forestry.
- (12) Removal of vegetation certified by the Florida Department of Forestry or PBC Fire Rescue such that a 30 foot buffer should be cleared around designated structures through the Fire Wise program.
- (13) Removal of non-native vegetation.

(C) Prohibited Activities. The planting or installation of vegetation identified as invasive non-native vegetation is prohibited.

SECTION 4. APPLICATION REQUIREMENTS AND FEES

(A) Application Requirements. The following application requirements apply.

- (1) Permit applications shall be made on forms provided by the Town.
- (2) An application shall not be deemed complete until the application fee and all information necessary to fully understand the extent, nature and potential impacts of a proposed project are received by the Town. Application information may include, but is not limited to:
 - a. A completed application form with the signature of the parcel owner, or authorized agent of the parcel owner with agent authorization letter;
 - b. A description of the work to be performed;
 - c. Parcel information including legal description and a location map;
 - d. Identification of the type, size and location of native trees that are 6 inches DBH and greater to be removed with representative color photographs; and
 - e. A tree replacement or tree relocation table, if applicable.

(B) Fees. Permit application filing fees shall be required, as established by a Resolution of the Town Council. Fees shall be non-refundable and non-transferable. An additional administrative fee may be required where projects require specific detailed site plan assistance by the Town, or where site plans significantly change after initial review. Application fees paid by check shall be payable to the Town of Loxahatchee Groves.

(C) Inspections. An application for a vegetation removal permit constitutes consent by the property owner and/or applicant for the Town to conduct site inspections in furtherance of this Chapter on the subject property, pursuant to permit requirements.

SECTION 5. STANDARDS AND CONDITIONS.

(A) Standards of Permit Issuance.

- (1) A Permit will be in effect for up one year after the issuance date. The Town may extend the authorization for one year upon written request submitted at least 30 days prior to expiration of the permit.
- (2) Trees authorized for removal during the effective dates of a permit may not be removed after the expiration of the permit without issuance of a new permit based upon a new application.
- (3) Any application received that is substantially the same as a previous application that has been denied by the Town subsequent to the effective date of this Chapter shall be denied with a written response provided to the applicant stating the reason for denial.
- (4) Any parcel where an unresolved violation of any Chapter administered by the Town, shall not be eligible for a permit under this Chapter until such violation has been resolved.
- (5) Any application containing false information, or any permit issued based upon false information, may be denied or revoked and may subject the applicant to enforcement proceedings pursuant to the provisions of this Code.

(B) Permit Conditions. The Town may include, but not be limited to, the following permit conditions with the approval of a Permit.

- (1) Conditions reasonably necessary to protect the environmental integrity of any on-site or adjacent wetlands, mitigation areas and preserve areas, and to prevent potential harm to listed plant and animal species.

- (2) Conditions for vegetation debris removal.
- (3) The use of barriers and flagging during construction to establish appropriate setbacks to protect and preserve existing native vegetation.
- (4) Conditions reasonably necessary to stabilize exposed and disturbed land surfaces.
- (5) A performance guarantee in an amount equal one-hundred and ten (110) percent of the cost of the required tree mitigation.

(C) Clearing Standards. The land owner shall take all possible measures during the land clearing process to avoid damage to trees and other native vegetation designated to remain after construction, and to protect exposed and disturbed soils from stormwater and wind forces.

- (1) Best management practices shall be implemented to protect exposed and disturbed soils from stormwater or wind forces during construction.
- (2) The design plan shall limit the removal of existing native vegetation only to that area needed to implement the project.
- (3) The design plan shall strive to maximize the use of any areas dominated by invasive non-native vegetation to the maximum degree feasible.
- (4) Native trees in the footprint of the proposed development that can feasible be transplanted with an anticipated high degree of success should be incorporated into other areas on the parcel to the maximum extent practicable.
- (5) All exposed and disturbed surfaces shall be mulched, seeded, sodded, vegetated or otherwise stabilized by the time of Certificate of Occupancy or final inspection. Failure to stabilize disturbed surfaces, as well as the removal of vegetation resulting in on-site or off-site erosion (sedimentation or siltation or both) or the windblown loss of soil shall be deemed a violation of this Chapter.

(D) Vacant Land Standards. The speculative removal of native vegetation in advance of parcel improvement on vacant lands is not consistent with the goals of this Chapter. However, certain conditions can provide assurances that parcel improvement will proceed in good faith. A General Permit may be issued by the Town in advance of issuance of a Land Development Permit or Building Permit if the following is provided:

- (1) Evidence that the anticipated work for which the land clearing permit is sought shall commence within one year of issuance of the General permit;
- (2) A performance guarantee in an amount equal to one-hundred and ten (110) percent of the cost to restore native vegetation on the parcel in the event that improvement of the parcel is abandoned or significantly delayed.
 - (a) The performance guarantee shall be executed by a person with a bona fide legal interest in the parcel.
 - (b) Two estimates of the cost to restore may be required for purposes of establishing the applicable amount of the performance guarantee.
 - (c) The form of Guarantee shall be:
 - i) A cash deposit or certificate of deposit assigned to the Town; or
 - ii) An escrow agreement for the benefit of the Town, in a form satisfactory to the Town Attorney and approved by the Town Council; or
 - iii) A performance bond issued by a State of Florida registered guarantee company in a form satisfactory to the Town Attorney and approved by the Town Council; or
 - iv) An irrevocable letter of credit in a form satisfactory to the Town Attorney and approved by the Town Council.
- (3) The performance guarantee shall be kept in full force until authorized site improvements commence on the parcel and any required tree mitigation is installed.
- (4) The vacant land standards of this section only apply to General Permit activities.

(E) Off-Site Tree Relocation. Re-locatable native vegetation that cannot be incorporated into the parcel may be relocated off-site. An applicant requesting off-site relocation shall provide evidence that on-site planting is not feasible.

- (1) An applicant conducting tree relocation shall provide a tree relocation management plan which shall include, but not be limited to, the relocation schedule and likelihood of success for each relocated tree, installation location of each relocated tree, identification and size of each relocated tree, and the replacements required pursuant to **Table A-2. Tree Replacement** of this Chapter to be implemented if the relocated material does not survive for a period of at least one year from the date of relocation.
- (2) An applicant conducting tree relocation shall provide irrigation, mulch, and other practical means to assist the survival of any relocated tree.
- (3) All relocated trees shall survive and demonstrate good health for a period of at least one year from the date of relocation. The Town shall retain jurisdiction to ensure compliance with this subsection.
- (4) All off-site relocation requires approval by the Town Council.
- (5) Off-site relocation shall optimally be placed in or adjacent to a public park parcel or a Preserve or Mitigation Area.

(F) Debris Disposal. Every effort shall be made by the landowner to minimize the amount of land clearing debris deposited in a land fill. Mulching or other appropriate utilization should be pursued whenever feasible.

- (1) The Town may include permit conditions for vegetation debris disposal by open burning, but the conditions shall not be in conflict with required burn permits from jurisdictional agencies.
- (2) The burying of rubbish, logs, lumber, underbrush or other organic matter and materials from pruning, clearing or grubbing operations which would decompose or allow the land to thereafter settle is determined to be change or modification of the grade of the land and is not authorized under this Chapter.
- (3) All felled materials shall be promptly and carefully removed from the site to avoid potential damage to remaining trees and vegetation, the harboring of insects or promotion of disease, the harboring of rodents or undesirable wildlife, or increases in fire hazards.

(G) Pruning Standards. Trees intended for shade purposes shall be allowed to reach mature canopy spread and shall be pruned in accordance with ANSI A300 Part 1 Pruning Standard and ANSI Z133.1 Safety Standard. These pruning standards are not applicable to select individual topiary or small novelty trees incorporated for decorative purposes into a landscaped area, provided these novelty trees are selectively shaped from early growth and these practices are not applied to mature canopy trees. Acts which effectively destroy a tree are a violation of this Chapter.

(H) Champion Tree Standards. Notwithstanding any other provisions of this Chapter, Champion or Co-Champion trees, as recognized by the Florida Department of Agriculture's Division of Forestry, shall not be removed except for extraordinary circumstances and hardships. Removal of any Champion or Co-Champion tree shall require Town Council approval.

(I) External Agency Standards. The applicant is responsible for obtaining all required permits and authorizations from external agencies having jurisdiction for the proposed work; including, but not limited to:

- (1) Prior to any land clearing activities in a jurisdictional wetland, the property owner shall obtain all required permits from the applicable agency or agencies having jurisdiction.
- (2) If construction of the project may result in an area of exposed soil greater than one acre, the project is subject to Federal National Pollution Discharge Elimination System (NPDES)

stormwater regulations. Prior to any land clearing activities the property owner or general contractor shall obtain all necessary external agency approvals.

SECTION 6. TREE MITIGATION

(A) Mitigation. Mitigation, through tree replacement as specified under this section, shall be required for the removal of native trees that are 6 inch DBH or greater. A tree replacement table identifying and quantifying all replacement trees to be installed shall be submitted with the permit application. The tree replacement plan shall also identify the size of each replacement tree and location for installation.

(B) Tree Replacement. Removed native trees shall be mitigated through replacement in accordance with **Table A–2. TREE REPLACEMENT** shown below. For relocated trees which die within one year of relocation, the replacement value shall be that as shown in **Table A–2.**

Table A – 2. TREE REPLACEMENT			
Crown Spread of Removed Tree		DBH In inches	# Replacement Trees Required
90 Feet or Greater	Or	27 inches or more	9
60-89 Feet	Or	24 < 27 inches	8
50-59 Feet	Or	21 < 24 inches	7
40-49 Feet	Or	18 < 21 inches	6
30-39 Feet	Or	15 < 18 inches	5
20-29 Feet	Or	12 < 15 inches	4
10-19 Feet	Or	9 < 12 inches	3
5-9 Feet	Or	6 < 9 inches	2
Less than 5 Feet	Or	Less than 6 inches	0

- (1) Canopy and conifer replacement trees shall be at least twelve (12) feet in height and two and one-half inches (2½) DBH. Palm replacement trees shall have a minimum of seven feet of clear trunk and have an overall height of no less than twelve (12) feet.
- (2) All replacement trees shall consist of native vegetation indigenous to the area, and be Florida Number 1 or better in quality.
- (3) Field grown replacement trees not meeting the standards specified above shall be evaluated on a case-by-case basis for quality to assess acceptability.
- (4) If the required replacement trees cannot to be purchased within sixty (60) miles of the parcel, an alternate replacement may be approved by the Town.
- (5) At least fifty (50) percent of the trees planted as mitigation shall be the same species as the trees removed.
- (6) All replacement plants specified in the General Permit are required to be accepted prior to the release of the Certificate of Occupancy, unless otherwise approved by the Town.
- (7) Monitoring time frames for all replacement plants specified in the General Permit shall be established as permit conditions.
- (8) Mitigation vegetation, other than trees, may be approved by the Town providing the vegetation is native and indigenous to the area.
- (9) For parcels that have a conservation easement requirement from the SFWMD, where the dedication of upland buffers around a wetland is included as wetland mitigation, any trees installed within the dedication upland buffer may apply to the tree replacements required in **Table A-2.**
- (10) Sufficient diversity shall be represented in replaced trees. If one through four different types of species are removed, the list of replacements shall represent at least two different types of species. If five through eight different types of species are removed, the list of replacements shall represent at least three different types of species. If nine through twelve different types

of species are removed, the list of replacements shall represent at least four different types of species. If greater than twelve different types of species are removed, the list of replacements shall represent at least five different types of species.

- (C) **Mitigation Waivers.** For single-family residential development on parcels of two (2) acres or less, mitigation requirements may be waived for the clearing area of the house pad and attached structures, and the septic system. This shall be determined by the Town on a case-by-case basis, after determination that the parcel owner is providing a building location that minimizes impacts to native vegetation to maximum extent practicable.
- (D) **Mitigation Deferrals.** The Town may provide for a parcel to be cleared for bona fide agriculture use without concurrent mitigation. The Town shall require that the parcel owner record a restrictive covenant on a Town approved form limiting the parcel to bona fide agriculture use, and requiring the parcel owner to **make a cash payment** to the _____ Trust Fund, or to mitigate in accordance with **Table A-2.** for the removed native trees at the time the parcel is converted from agricultural to a non-agricultural land use. The restrictive covenant shall include language quantifying the complete tree mitigation specifications required at the time of conversion.
- (E) **Alternative Mitigation.** Alternative mitigation proposals that meet the purpose and intent of this Chapter may also be submitted and will be reviewed on a case by case basis. Alternative mitigation proposals require approval by the Town Council prior to issuance of a General permit.
- (F) **Mitigation for Violations.** When native trees that are 6 inches DBH or greater are removed or are damaged without a permit, or when trees that were to be preserved in place are damaged or destroyed by activities conducted with a permit, those native trees shall be replaced at double the rate shown in the **Table A-2.**

SECTION 7. APPEALS

- (A) **Appeal.** An applicant for any permit may appeal a final determination made by the Town's permitting authority to the Town Council.
- (B) **Submittal.** A written request for an appeal and the filing fee must be submitted within 20 calendar days of the applicant's receipt of the decision by the Town's permitting authority. The appeal must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. Failure to file within such time frame shall constitute a waiver of a person's right of review by the Town Council.
- (C) **Hearing.** The appeal shall be reviewed at a hearing by the Town Council no later than 60 calendar days following the Town's receipt of a request and the required filing fee. The applicant will receive notice of the hearing no less than 15 calendar days in advance of the hearing. At the hearing, the Town Council shall provide the applicant and the Town, or their respective legal representatives, an opportunity to present testimony and evidence, provided such information was part of the review before the Town's permitting authority. All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. The Town Council, at their discretion, may exclude irrelevant, immaterial or unduly repetitious evidence, but all conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida. Any part of the evidence may be received in written form. The Town Council shall reverse the decision of the Town's permitting authority only if there is substantial competent evidence in the record that the Town's permitting authority erred in applying the standards of this Chapter. The Town Council shall enter a decision by written order not less than ten days following conclusion of the hearing. The order shall include findings of fact and conclusions of law and shall be deemed final administrative action.

(D) Judicial Relief. An applicant may appeal a final written order to the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County. Such appeal shall not be a hearing de novo, but shall be a petition for Writ of Certiorari and the Court shall be limited to appellate review of the record created before the Town Council. The Town may assess a reasonable fee for the preparation of the record to be paid by the Petitioner in accordance with F.S. §119.07, as amended from time to time.

SECTION 8. VIOLATIONS

(A) Violations. A violation shall be the failure to comply with the requirements of this Chapter or with a condition of a permit issued by the Town pursuant to this Chapter. Each condition or requirement violated and each occurrence of a violation shall constitute as a separate violation.

(B) Enforcement. The Town may enforce the provisions of this Chapter by any lawful means including, but not limited to, issuing a civil citation, bringing charges before the Town Special Master, and seeking injunctive and equitable relief. For the purposes of determining the penalties provided under this Chapter, the removal or death of a tree in violation of this Chapter shall be deemed irreparable and irreversible. To enforce compliance with this Chapter, the Town may issue a cease and desist order or require that a building permit or Certificate of Occupancy be withheld. A violation of this Chapter may be punishable by one or more of the following:

- (1) Quadruple permit fees for violations involving activities conducted without a valid permit that may otherwise have been permitted;
- (2) Quadruple permit modification fees for activities conducted with a valid permit that are inconsistent with the stated permit conditions and result in a need to modify the existing permit;
- (3) Any applicable remedies under Chapters 166 and 162, Florida Statutes, as may be amended from time to time;
- (4) Remedial actions to restore the property to pre-violation conditions; and
- (5) The Town may take any other appropriate legal action, including but not limited to, administration action, and requests for temporary and permanent injunctions to enforce the provisions of this Chapter.

(C) Violation Fees. Violation fees shall be required as established by Resolution of the Town Council. All monies collected as civil penalties for violations of this Chapter shall be paid to the Town of Loxahatchee Groves for _____ **Trust Fund.**