# Environmentally Endangered Lands Program

# Selection and Management Committee Meeting

## January 21, 2022 Minutes

## Attendance

## SELECTION AND MANAGEMENT COMMITTEE MEMBERS

Tamy Dabu*,* Oli Johnson*,* Jim Burney, Mac McLouth (Tourism Development Council) (TDC), Doug Sphar (Recreation and Education Advisory Committee) (REAC), Lisa Toland, and Kim Zarillo (Procedures Committee) attended in-person. Jennifer Thompson attended via Zoom.

## SELECTION AND MANAGEMENT COMMITTEE EMERITUS MEMBERS

Dr. Paul Schmalzer, Dr. Tammy Foster, and Dr. Ross Hinkle attended via Zoom.

### ENVIRONMENTALLY ENDANGERED LANDS PROGRAM STAFF

Mike Knight and Steve McGuffey attended in-person. Brad Manley, Damien Keene, David DeMeyer, Jenny Warner, Jesse Briel, and Ray Mojica attended via Zoom.

### GUESTS

Monty Montgomery (PC), Jake Zehnder (REAC), Murray Hann (REAC), and Drew Thompson attended in-person. Ana, Jason Strobel, Mark Britt, Richard Kohler, Richard Follett (REAC) (PC), and Sharon attended via Zoom.

*Protecting and Preserving Biological Diversity
Through Responsible Stewardship of Brevard County’s Natural Resources*

## Meeting Minutes

### CALL TO ORDER AND ROLL CALL

Tamy Dabu called the meeting to order at 1:02 p.m.

### PUBLIC COMMENT

Tamy asked for public comment. Murray Hann mentioned he has some recommendations for compromises for the Malabar Scrub Restoration Project. Tamy asked him to hold these comments until the agenda item discussion.

### MINUTES

The SMC December 21, 2021 meeting minutes were presented for approval.

Doug stated Fox Lake should be replaced with Colonial Crossing on page 3, second line under Committee Member Reports. Paul Schmalzer noted Fox Lake should be replaced with Buck Lake Conservation Area on Page 5, paragraph 3, third sentence.

### MOTION 1

**Mac McLouth moved to approve the SMC December 21, 2021 minutes as amended.**

**Doug Sphar seconded the motion.**

**Motion carried unanimously.**

### ADMINISTRATIVE REVIEW

None

### COMMITTEE MEMBER REPORTS

Doug Sphar shared that Karen MacArthur, a long-time REAC member, passed away.

### AGENDA ITEM 1

Malabar Scrub Restoration Project Update

Mike stated his goal of presenting two presentations. He mentioned Murray Hann provided some thoughts on alternatives for the restoration at Malabar East and West. Mike wants to make sure the SMC hears these recommendations.

Mike mentioned content from a post made by the Brevard Mountain Bike Association on their website to make the SMC aware and to address some of the concerns expressed on this page in the document titled *The Malabar Scrub Decimation Project*. Mike reviewed the content on this page and provided clarification on some of the misinformation in this post. He described the habitat type pictured (degraded wetland with pine encroachment including an image of a mountain bike). Mike mentioned a photo taken after a prescribed fire (exact location unknown) and added this is not what a site looks like after restoration and recovery. Mike added it is unfortunate these types of things are being used to portray this restoration project and they should be identified as what they actually are. He noted the word decimation was used a second time to describe this project. Mike added there is a reference to removing pine trees at Jordan Scrub. He noted some trees were removed on a smaller scale in-house; however, this site is not included in the timbering project. Mike referred to basal area data in this post and stated there seems to be some confusion between flatwoods and scrub habitats. Mike stated we do not know exactly how many trees to be removed. Doug mentioned the statement in the post that 1,296 trucks would be needed to haul away the trees. Mike responded, according the Florida Forest Service there is approximately 1 to 2 trucks per acre depending on the size of the trees. Mike noted this site is not being cleared; however, pine and oak trees will be reduced in this overgrown habitat for the protection of species that depend on scrub.

Jim Burney mentioned the reference to146,000 trees and 1,296 truckloads in the post. He asked how many acres does this encompass. Steve responded the timber project is between 1,100 to 1,200 acres including Malabar East, Micco both north and south of Micco Road, and Grant Flatwoods South located east of 95 South off Micco Road. Mike stated these are flatwoods. Steve added the goal is to get the dense timber area down to 40 to 50 basal area which is recommended for Red-Cockaded Woodpecker (RCW) habitat so they will be drawn to this area.

Mike mentioned the reference to 100,000 trees in the article in Florida Today and explained this arbitrary number was used in a series of emails to understand the permitting requirements for a survey and the cost for the removal of trees. Florida Today contacted Mike and he provided the estimate of 10,000 to 20,000 trees to be removed. He explained this depends on if the Program is required to conduct a survey and this will narrow this number down. Mike stated somehow Florida Today picked up on this email and this number was falsely reported at the Greenways and Trails Committee meeting. He added it is unfortunate this is the perception that is being put out there; but, the Program does not have a concrete number of trees to be removed. Steve stated looking at aerials from Malabar East and West he estimates the number of trees to be removed is from 10,000 to 20,000. Lisa asked for a definition of what we are calling trees. Mike responded there are two varieties which are Pine Trees included in the timber project and any protected tree, as defined by the Town of Malabar (Town), that are 5 inches in diameter or larger.

Murray Hann referenced the Town’s mowing permit requirement and fee to cut down trees. He stated these new ordinances were created because property owners were clearing land. Murray asked if these types of fees were waived by the Town previously. Mike responded he was referencing the new tree protection fee and noted the new mowing permit prevents mowing an existing fire line, conducting a prescribed fire, or disking an existing fire line. Mike added he hopes there is room for discussion on this topic. Lisa asked if this is for trees 5 inches or greater. Mike responded, yes. Kim stated she understood this is about development. She added the Program is

not developing and restoration should fall under a different category. Mac commented it is about shade. Mike stated a survey is required to apply for a permit and the cost to conduct a survey would cost a minimum of $80,000 and take months of work.

Paul Schmalzer commented if the Town of Malabar intends to prevent the restoration and management of habitat that is essential for the Florida Scrub-jay they could encounter difficulty with the Endangered Species Office because management is needed to ensure the survival of Florida Scrub-jays on this site. Mike responded to be fair to the Town, he thinks the Town believes there is room for compromise to achieve both. Lisa added the SMC’s role is to consider the Board’s action and determine the Committee’s reaction in light of that Board action. She mentioned most counties are not required to obtain a permit for land management for conservation. Mike responded, he will provide some information on that shortly. Doug asked if there has been any feedback from the State regarding this issue. Mike responded there have been discussions, but he is not aware of the specifics.

Murray Hann explained the Town is between a rock and a hard place because they got rid of the language that allowed for the previous permit. He added the Town does not have an ideal permit and only had one meeting since this process started. Murray added the Town wants to do the right thing for everybody. Lisa recommends the SMC hear what the Board says and determine what we are looking at from the County Attorney’s Office. She agrees there should be more public input and have the Town of Malabar reign it back in to defuse the situation. Mike responded the Town Council directed staff to review the code.

Mike presented a PowerPoint presentation titled *Malabar Scrub Restoration Update* and provided an overview of the recent and upcoming events. Drew and Murray commented on the Councilmen’s statements at the January 3rd meeting. Lisa stated as an individual she contacted each of the Board of County Commissioners and requested this issue be tabled to provide time for education and input. She shared her interpretation of the Town of Malabar’s meeting and the Board’s reaction. Jim Burney asked if the Board chooses to close Malabar Scrub Sanctuary is it within the SMC’s purview to recommend opening the sanctuary. He asked if the SMC is going to be looked at to grant authority to the compromises suggested by Murray Hann. Mike replied the answer to both of those questions is yes.

Doug shared his observation of a group with a land use dispute. He stated this backfired because the group mentioned suing the County. Drew Thompson reiterated his support of scrub-jays, the need to calmly look at the issue, and compromise. Drew shared his concern that the trees will be gone forever and the next referendum will not be passed leaving the scrub-jays without protection. Kim agrees with Lisa to wait until the permit issue is resolved and/or the SMC receives direction from the Board before the SMC makes any other decisions. She added she is not agreeable to changing the management plan unless Dr. Breininger and Dr. Schmalzer agree changes would be beneficial. Kim stated she does not want to see Malabar Scrub Sanctuary closed.

Jim Burney added he thinks closing the sanctuary is counterproductive. Lisa asked if we need something from the Committee stating we would like an opportunity to continue this process before it escalates. Tamy Dabu stated she understands the closing of the property is to prevent public access, but does not affect the management plan. Lisa stated we need the permit to proceed. Tamy replied that remains to be seen since it is public land in conservation and should be exempt. Tamy’s recommendation is to let the attorney resolve this and the Program can continue with management. Lisa stated she prefers to be inclusive, but she agrees with Tamy on this one and before we have additional meetings we need to understand our position. Doug stated the Division of State Lands website states all State-owned land must have a management plan. Lisa doesn’t think this can supersede local government. Steve McGuffey stated the Program worked with the City of Rockledge and obtained an exemption based on the best practices and science. Tamy suggested moving forward with the presentation. Doug agreed.

Mike displayed aerial images, provided an overview of the project, and explained Murray’s recommendations. Lisa mentioned she visited the site with Steve, stated her thoughts about the various tree densities, and noted the possibility to compromise. Mac McLouth asked if the criteria can be changed to incorporate other users. Mac asked Mike for his recommendation. Tamy responded the management plan is clear for scrub-jays and it is scientifically documented. Murray stated he is not asking to change the criteria rather to leave some small areas that are not near prime habitat. Mike replied he understands, but stated it is next to prime habitat. Lisa asked if the creek is natural. Steve responded this creek is channelized. Murray thinks it was channelized up to the road, but is quite natural to the north. Discussion ensued about specific areas, historical habitat, tree densities, relocating trails, and the ability to compromise in these areas. Mac made a motion to direct staff to look for minor modifications in the plan to adapt, accommodate both public issues, and notify the County Commission. Tamy responded staff is considering compromises and looking at altering the trail; however, that is not something that is a question at this point.

Dr. Schmalzer stated he reviewed the PowerPoint presentation created by Murray Hann. He identified the relocation of trails into a more naturally mesic area with a greater tree density as a possible consideration and not taking away from the restoration of scrub habitat that is needed for scrub-jays. Mac commented that sounds good to him. Doug Sphar stated he agrees with Paul that management is the primary focus. Mike stated he has heard criticism about the lack of information and wants everyone to understand each side of this issue. Mike added Dr. Breininger indicated there may be some opportunities to alter trails and selectively modify tree density to1 to 2 trees

per acre in some areas instead of 0 to 1 tree per acre. Tamy noted there was not a second for the motion and suggested moving on with the presentation.

Mike proceeded through the slides. Murray noted that area is very wet and has a lot of Turkey Oaks and palms. Mike responded this will be factored in when considering which trees to retain and still meet the tree densities. Murray stated the trail by the entrance is the “signature parcel” for most users and they believe the entire sanctuary is like this; however, he stated this is not accurate and this trail will not affect bikers much. Mike finished the slides and responded to Mac McLouth’s question regarding his recommendation. He stated at the staff level we look at how trails can be relocated in certain areas and find creative solutions while considering tree density. Lisa asked if we want to send a message as a Committee to the Town to explore opportunities to reach a compromise or just wait and see what happens in the next few weeks.

Dr. Schmalzer agrees with the input received from Dr. Breininger that leaving a few trees in specific locations will not negatively impact the scrub-jays and relocating trails as a potential solution. He commented one of the problems with Malabar is the management has been too compromised and the Program did not pursue the management that should have been done based on scrub-jay biology because of opposition to more restoration. He thinks we need to be careful when compromising because major changes in the restoration plan will decrease the number of jays at Malabar and put the Southern Brevard population under increased risk.

Drew Thompson stated he cannot speak on behalf of the Town of Malabar; and, he wants to reiterate we are pro-conservation, pro-scrub-jay, and want to work together to ensure a future referendum is renewed. He added he suspects we can talk to you regarding Cameron Preserve which would be a game changer to what we are talking about. He added trust is a two-way street.

Doug recalled the management that was completed from 2004 to 2006, noted the property looked terrible for 2 to 3 years, and it looks beautiful now. He commented he agrees with Paul about the compromises made at that time.

Murray stated there are a lot of good reasons to make peace with the Town of Malabar and his understanding that the Program would meet local codes; however, he may be incorrect. Secondly, the only access to Malabar West is the gate on Malabar’s right of way which is not contested. He added permission to work on the right of way was required in the past and he believes it will be needed in the future. He stated this could have been done very differently if the timeline were not so compressed.

Jake Zehnder stated he understands what Murray is saying and agrees there is a big difference in the institutional perspective between the Program, the SMC, and the general public. He added in terms of the timeline being compressed, this is a multi-year project. He noted the Trails and

Greenways Committee were involved in the management plan 20 years ago. He stated the issue is the stakeholder meetings leading up to this. He further stated the EEL Program cannot just assume the public knows because there is a management plan and a big management effort is coming up to make the scrub healthy for all scrub species with the Florida Scrub-jay being the umbrella species. He stated there may have been a rush for funding and contractors, but the plan has been in place.

Jim Burney asked if Cameron Preserve is included in the Population Viability Analysis. Mike responded he is not sure, but Cameron Preserve was listed in the potential jay territories in the Adaptive Resource Management (ARM) data. Jim referenced a corner in Malabar West on page 13 that buts up to a neighborhood and is adjacent to the oaks previously discussed. In his conversation with Steve, that entire corner previously had a high pine tree density and these trees were removed. Mike responded he committed to ensure the alternate view point was heard; however, it seems the two perspectives are too far away to come to a compromise as far as the jays are concerned. That being said, he agrees with Dr. Schmalzer to move trails as best we can and selectively pick trees that can remain. Other than that, there is not any additional room to compromise because of the size of this sanctuary and the triage condition of the jays. Mike added, Dr. Schmalzer previously commented the concessions made by staff against the SMC’s recommendations in the past are negatively affecting this restoration project.

Steve asked Drew Thompson and Murray Hann if we are too far apart to compromise considering the Program is open to relocating trails along the creek and selectively choosing trees to remain. Drew responded he cannot make this decision; however, the Town does listen to us regarding expertise. He stated he likes to hear the Program is talking and are willing to work together within reason. Drew stated they understand the logic of optimal scrub habitat and are looking at retaining trees along the perimeter of the site. He added they are perplexed at how cutting trees in a corner when there are trees on the other side of the fence is beneficial. Steve stated we are trying to optimize as much as we can since it is such a small site.

Murray stated one of the things that is tough to understand is the hard and fast 1,000-foot rule, since this would result in zero acres at Malabar West. He added the response to that is we have to manage all we can. Steve responded, with that logic we shouldn’t do anything at all. Murray commented he has only seen scrub-jays at Malabar West in the last six months, he now sees a couple, believes the bird count is improving, and he doesn’t want them to move away. Steve replied the jays have been there for a year or so and this is a direct result of the previous restoration. Murray added the only thing they are suggesting in Malabar West are little clumps of trees that are up against existing developments and the drainage ditch. Lisa clarified the Program has management requirements such as not ripping out tree roots. Steve agreed. Lisa stated the

organization will obtain a permit if the permit exists and will respect local government rule. She added she personally respects that. Murray responded the permit is a different issue. Drew stated he is not trying to posture; rather to interpret the Program’s documentation and consider best practices. Drew stated the Town of Malabar wants a resolution to this and wants the Program to be successful in the future. Drew added he is very concerned about public perception and the Program is underestimating public resistance to this project. He added we will work on a plan that includes the Cameron Preserve and present it. Murray added the presentation he provided was reviewed by the Trails and Greenways Committee and the Town Council. He believes this is as good as they can do and keep the subdivisions happy. He mentioned it is hard to demonstrate everything in a PowerPoint and he appreciates Mike’s drone footage.

Mac McLouth asked if we have reviewed this plan. Tamy responded, right now. Doug stated we received it in an email. Mac asked if Doug reviewed it. Doug replied, he looked at it and compared it to the management plan. Mac stated he is looking for a solution. Lisa moved to move on at this point and she hopes Malabar understands we want to hear you and to engage; but, this is an incredibly awkward situation. She stated we respect Malabar. She added we represent all of Brevard County and State of Florida voters. Mac asked what Lisa recommends. Lisa responded she recommends to wait and see what the County Attorney says and how Malabar responds. She added we already had a meeting cancelled. Lisa stated making a motion to negotiate at this time seems to conflict with our directive from the County Commission. Steve restated his question of how far apart we are. Drew responded he thinks we will meet in the middle, but wants to mitigate the placement of two trees per average acre in certain areas and to save a few more trees on the perimeter. Drew stated he is optimistic we can repair this relationship.

Doug stated the Florida Fish and Wildlife Conservation Commission (FWCC) criteria for scrub-management is in the management plan. Murray stated the management plan is expired and has been for three years. Mike responded it is not expired, but the State prefers they are updated every 10 years. Murray commented he would like to see the ten-year update. Doug stated the management plans are online. Mike clarified the management plans are on hold because we are trying to get through this triage situation. Mike explained it becomes a lot of work as the Program plans to incorporate the Malabar Management Plan into the South Brevard Coastal Management Plan which is a huge effort. Doug asked when the next five-year review is. Mike responded the most recent five-year update was completed in April. Mac asked if there is room for negotiation. Mike responded we’ve outlined where we think the opportunities are and portrayed our position. Lisa moved to adjourn this meeting. Mac moved to negotiate. Tamy stated we have a motion to adjourn at 3:35 p.m. Mac asked for clarification on the motion. Doug stated to adjourn. Mac commented he is disappointed with the group.

The presentations and Zoom recording are available upon request.

### MOTION 2

**Lisa motioned to adjourn at 3:35**

**Doug seconded.**

**Motion carried.**

**Mac opposed this motion.**