

Florida Arborist

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Key Differences Between Expert Witnesses and Fact Witnesses

James Komen, Board Certified Master Arborist & Registered Consulting Arborist A two-part series



Continued from Fall Florida Arborist; Click here to review the first half.

Compensation for Testimony

As an inducement for spending time gathering data and formulating an opinion for the case, experts can be paid for their services. Payment may be hourly, per diem, or a flat project rate. Some consultants charge a "designation fee" in addition to their hourly rate to reflect the opportunity cost of reserving a trial date on the calendar, even if the case settles before trial. However, the expert's compensation cannot be contingent upon the outcome of the case, or the jury's perception of the credibility of the expert will come into question. All forms of

payment and agreement between the expert and the hiring attorney are discoverable (see Pre-Trial Disclosure below) by the opposing party.

Expert witnesses may require special payment for their services, but fact witnesses cannot be paid for their services. Fact witnesses may only be reimbursed for their direct expenses and lost time in delivering testimony. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 96-402 (1996). Different jurisdictions provide for witness compensation amounts, but they all tend to be very skimpy. In California, it is \$35 per day plus \$0.20 per mile traveled. Cal. Gov't Code § 68093; see also 28 U.S.C.A. §

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1821 (\$40/day plus reasonable travel costs in Federal Court); see also La. Stat. Ann. § 13:3671 (\$8/day plus \$0.16/mile in LA); see also N.Y. C.P.L.R. 8001 (\$15/ day plus \$0.23/mile in NY).

That is not to say a fact witness cannot be compensated more than the statutory minimums. In New York, the "per-day fee does not preclude a party from voluntarily paying such witness additional amounts to compensate him or her for time lost." N.Y. C.P.L.R. 8001. However, the voluntary payment provision must be tempered by the potential to bias the witness. While a fact witness may be compensated more than the statutory minimum, "the jury should assess whether the compensation was disproportionately more than what was reasonable for the loss of the witness's time from work or business." Caldwell v. Cablevision Sys. Corp., 20 N.Y.3d 365.

Trouble for a consultant arises when a consultant is hired directly by a party to a lawsuit and not the party's attorney. If the consultant is not designated as an ex-

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pert witness, the consultant's client does not have to pay the requested expert witness fee rate. Worse, since the consultant presumably has personal knowledge of the matter (after observing the tree in person, for example), the opposing counsel could potentially subpoena the consultant and require her to testify at trial or deposition for only the meager statutory witness fee as compensation.

This is a good reason for a consultant to require the attorney hire her rather than the party involved in the conflict. If the party to the suit pays the consultant, her involvement in procuring advice is discoverable (see Pre-Trial Disclosure below). But, if the attorney hires the consultant, the consultant's involvement and reports are protected under work product privilege. Fed. R. Civ. P. 26. In this case, the consultant's involvement and reports are only discoverable if the consultant is designated as an expert witness, for which the consultant would likely require compensation.



Pre-Trial Disclosure

After a complaint is filed by a plaintiff and an answer is filed by a defendant, the next phase of the litigation timeline begins: discovery. Discovery is a pre-trial exchange of information between the two parties. Most information relating to a case is "discoverable," meaning that a party can compel the opposition to provide a copy of it during this phase. Discoverable materials include, "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses…" Fed. R. Civ. P. 26.

However, there are some documents and communications that are protected by the work product privilege, giving a party's attorney the option to withhold materials prepared in anticipation of litigation. Such materials may be disclosed voluntarily or withheld, so long as the consultant providing the information is not designated as a testifying expert witness. Some consultants are never designated as experts; rather, they provide their opinions to the attorney of record and their reports are never disclosed to the opposing party. Once an expert witness is designated, the expert's materials and communications become discoverable, subject to some limitations.

In Federal Court, "communications between the party's attorney and any [expert] witness" are still privileged (even after designation), except for communication relating to compensation for the expert or the facts or assumptions relied upon in forming the expert's opinion. Fed. R. Civ. P. 26. Federal Court also protects draft reports. A consultant can prepare and revise a report, but the final version of that report would be the only version the opposing party could review. Fed. R. Civ. P. 26 (b)(4)(b).

In contrast, some states require full disclosure of all communication between the designated expert and the attorney and all draft versions of reports. Florida allows discovery of all drafts and communications between attorney and expert. Peck v. Messina, 523 So. 2d 1154. See also Nat'l Steel Prod. Co. v. Superior Court, 164 Cal. App. 3d 476 (identifying an expert as a witness in CA waived the attorney-client privilege).

<u>Differences continued on page 5</u>

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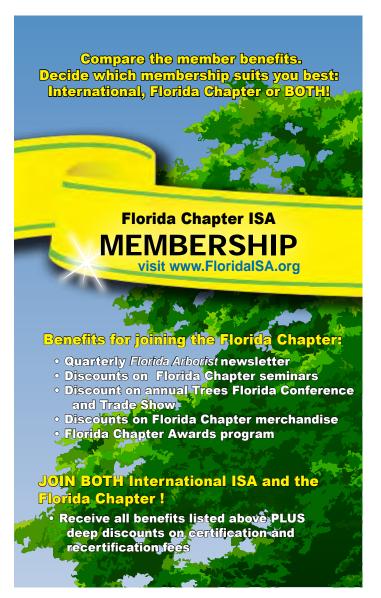
Some cases can begin in state court and get removed to federal court; others can be remanded from federal court to state court, subjecting them to the new jurisdiction's rules of civil procedure. It is good practice for a consultant to treat all communications and reports with the same sensitivity and caution as any other ordinarily discoverable materials.

The opposing party must be informed when an expert is designated. In federal court, designated expert witnesses must be declared at least 90 days prior to the trial date. In addition, all reports and materials upon which the expert will rely must be furnished to the opposing party. This is an important step because failure to identify witness as required in Rule 26 will result in exclusion of that witness's testimony. Fed. R. Civ. P. 37 (c) (1).

Experts must be disclosed in advance of trial, but lay witnesses need not be disclosed in advance. (Kreiter 2016). This means that consultants can still be subpoenaed and dragged into court after the expert designation period has passed. However, if they are named as witnesses after the designation period, they will only be fact witnesses, limiting their testimony to personal knowledge of the matter.

Some expert witnesses are hybrid witnesses, having both personal knowledge pertaining to the matter at hand and also specialized technical knowledge that they use to formulate opinions. If a witness is intended to be a hybrid, she must be disclosed as an expert witness according to Rule 26(a)(2) or the witness's expert testimony will be excluded. Musser et ux. v. Gentiva Health Services, f/k/a Olsten Health Services, No. 03-1312, 2004 WL 145335 (7th Cir. Jan. 28, 2004).

If a consultant is subpoenaed as a fact witness, only testimony that relates to the witness's personal knowledge, direct perception, or opinion rationally based on that perception is admissible. That means that opinions regarding standard of care, hypotheticals, and scientific research are inadmissible. While it may seem that an unscrupulous attorney could obtain free (or very inexpensive) expert testimony by skipping designation and subsequently subpoenaing an expert, the testimony may not be worth much because the expert's opinions



based on technical knowledge are inadmissible.

If a consultant is served with a subpoena to appear as a fact witness, it is advisable to consult a legal advisor regarding the applicable jurisdiction's procedural rules. Non-party witnesses are permitted to have their own counsel.

Conclusion

Fact witness testimony is limited to individuals' direct knowledge or opinions which are rationally based on their perceptions. Expert testimony can be an opinion or information based on specialized knowledge, training, and experience. Expert testimony is entitled to special protections, but it is subject to rules of disclosure, timing, and compensation. These rules can vary by ju-

Differences continued on page 6



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Differences continued from page 5

risdiction in critical ways. A prudent consultant should seek the advice of a qualified legal advisor.

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Peck v. Messina, 523 So. 2d 1154 *





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Florida Chapter Board Updates

BOARD SHORTS:

TIME TO VOTE!



All current Florida Chapter members should have received an email announcement to vote online for the open 2021 Florida ISA board seats – CHECK YOUR EMAIL AND VOTE!

- Vice President: Jonathan Frank or Carson Smith
- Commercial Arborist Rep: Gareth Coggan or Tim Walters
- Grower Rep: Michael Marshall or Patrick Miller
- Climber Rep: Brian Gould or Colin Kell

Voting ends November 29, 2020.

BOARD MEETINGS



The Florida ISA board held a combined live and Zoom board meeting in September, our first option for a live face-to-face meeting. Attending board members practiced all COVID precautions with distancing and

face masks. It was great to see many of the familiar faces of our board, both in the meeting room and on the Zoom screen. Rest assured; our board is forging ahead with Chapter business. The upcoming board meeting in November will be held in a similar fashion.

AMAZON SMILE



Did you know...you can help support the Florida Chapter with every Amazon purchase you make? All you have to do is go to smile.amazon.com and select "The

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- Sign in to smile.amazon.com on your desktop or mobile phone browser.
- From your desktop, go to Your Account and select the option to Change your Charity. Or, from your mobile browser, select Change your Charity from the options at the bottom of the page. Select a new charitable organization to support.
- Note: You can also hover over the Supporting notice in the navigation at the top of any page, and then select the Change link next to the name of the charity you're currently supporting.
- After you have that setup, you can then also set this up via the application for Amazon on your phone. The Florida Chapter can receive .05% of every eligible purchase.



Bringing New Life to Fallen Urban Trees

By Todd Gartner and Ben Christensen October 23, 2020



If a tree falls in a city, where does it go? Reforestation hubs divert downed urban trees from landfills, saving cities money and generating revenue to plant and maintain more trees. Photo by Vladimir Kudinov/Unsplash

Editor's note: The Reforestation Hubs initiative is offering pro-bono technical support to a select group of local governments and NGO partners in the United States. Interested cities and NGOs can submit a letter of interest by October 30, 2020 here.

The city is a difficult place for a tree to survive. Compared to their counterparts in the countryside, urban trees generally get less water, suffer more intense heat, compete for space with unyielding infrastructure and frequently become riddled with disease and pests. As a result, many cities are stuck with a lot of dead trees every year.

Cities and private contractors cut them down and usually turn them into firewood, mulch or haul them to the landfill. Often, cities replant fewer trees than they remove, leading to a net loss in canopy cover over time. However, these trees don't have to go to waste. "Reforestation hubs" are an exciting model that will save these trees from landfills and instead find new uses for them, such as repurposing for furniture or flooring. This can help cities deal with dead trees while saving money, creating new jobs, addressing long-term public health goals and mitigating climate change at scale.

The Urban Wood Opportunity

Restoring trees to the United States landscape offers big benefits for the climate and communities alike. The scale of the opportunity is staggering: landscapes across the United States alone could support 60 billion new trees. This would sequester up to 540 million tons of CO2 per year – equivalent to replacing 117 million gasoline cars with electric vehicles running on clean electricity. The United States could plant an estimated 400 million of these trees in cities. Capturing this opportunity will take financial resources and concerted effort by a variety of public and private partners.

While waiting for government funding or voluntary private sector finance to kick in at a meaningful scale, cities across the country hold a massive and untapped resource. However, this resource is going to waste – literally.

Every year, 36 million trees come down in cities across the United States due to old age, disease and new development, resulting in economic losses of up to \$786 million each year. Much of this wood could become valuable products, but instead often gets chipped, thrown in a landfill or burned as firewood. Rethinking urban wood waste could be an unexpected climate and economic solution, turning a burden on the climate and city budgets into a financial engine for reforestation across the broader landscape.

This opportunity is the impetus for the concept of re-

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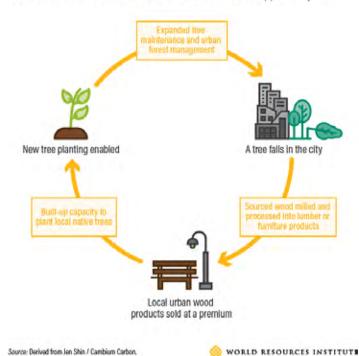
forestation hubs, pioneered by Cambium Carbon, Cities4Forests and the Arbor Day Foundation, which will be working with city officials to create the nation's first reforestation hubs by 2022 through a TNC Natural Climate Change Solutions Accelerator Grant.

What is a Reforestation Hub?

In their simplest form, reforestation hubs are public-private partnerships that save cities money and generate revenue to plant and maintain more trees by diverting downed urban trees from landfills. Instead of going to waste, downed trees are sorted and turned into their highest and best use like furniture, cross-laminated timber, lumber, flooring, compost or mulch. This saves cities money and generates revenue to plant and maintain more trees, building a vibrant circular economy and allowing cities to better combat climate change. In the process, reforestation hubs also support public health and economic growth by creating jobs in green infrastructure through employing people at mills, nurseries and new planting initiatives.

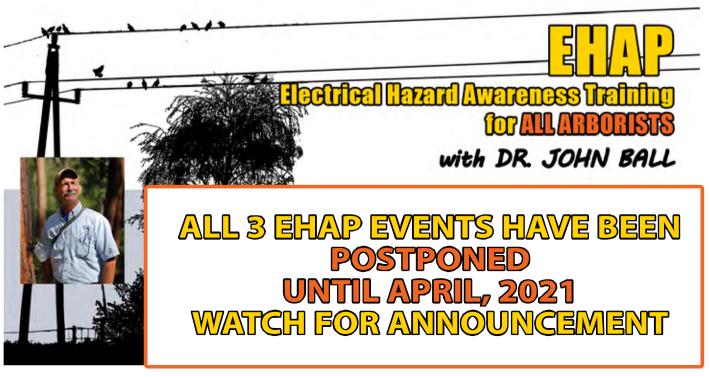
Despite the value urban wood can provide, critical obstacles stand in the way of utilizing them. Cities lack the infrastructure to make fallen trees valuable, and wood product supply chains are not structured around urban wood products. Addressing these two gaps is the first

How Reforestation Hubs Turn Urban Wood Waste into Opportunity



step in creating a functioning reforestation hub. Doing so will require investments in sort yards and mill infrastructure to process incoming wood waste, bringing together city officials, urban millers, artisans, furniture makers, biochar facilities and composting operations. Additionally, it will require building value chains that

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connect these urban wood ecosystems to the broader market.

Urban wood champions are chipping away at this vision, but with slow progress. Building a reforestation hub requires immense collaboration, and urban wood is a complex raw material to build consistent supply chains around. Reforestation hubs break this log jam by bringing together four ingredients:

- 1. City-level commitments to divert wood from city agency and contractor operations, buy urban wood for city operations and establish long-term planting plans.
- 2. Private finance from philanthropic and impact investors for necessary infrastructure.
- 3. A market incubation platform that drives consumer awareness and leverages technology to connect buyers and sellers.
- 4. A social impact mission that reinvests profits from the new urban wood economy into tree planting in reforestation hub cities and the surrounding landscapes.

This vision builds on the work of the Baltimore Wood Project, which creates furniture and other high-value products from dead urban trees and reclaimed lumber from houses facing demolition. Baltimore created a network of suppliers and buyers of reclaimed lumber and invested heavily in Camp Small, a sort yard that can process their existing waste stream and turn it into value.

The Benefits of Reforestation Hubs 10-Year estimated benefits for one large metropolitan area ENVIRONMENT PUBLIC HEALTH ECONOMY Source Earth Front Landfill Waste Diverted Public Health Refused Urban Heal Island Effect Finergy Costs 45 Direct Jobs Created Source Earthun Carten.

Growing New Opportunities for City Trees

Reforestation hubs not only bring value through using dead trees, but by creating a path for planting new trees in cities. This comes with numerous public health benefits, including purifying air and water, helping to reduce respiratory disease and decreasing heat. Trees also increase stormwater retention to ease stress on city sewer systems.

Tree canopy health often follows wealth and racial lines in cities, depriving underserved communities of these benefits. Reforestation hubs, by applying the principles of tree equity, can provide funds to improve tree health and plant more trees that benefit these communities. They can also provide new employment opportunities through the markets created for previously under-utilized urban wood.

Making the Most of Fallen Trees

With the financial strain caused by the COVID-19 pandemic, cities may face pressure to defer tree maintenance and replanting, despite the many benefits urban trees provide. At the same time, well-planned reforestation holds the potential to improve the respiratory health of residents and increased urban tree canopies can help cities meet their climate goals. Reforestation hubs offer a multitude of benefits, building new revenue to help fund tree care and planting as well as providing a path to financing broader tree work in cities. As a result, reforestation hubs have immense potential to become economic, public health and climate boons for cities in the face of intersecting crises.

United States cities and NGOs looking for assistance in developing a reforestation hub can apply to receive pro-bono assistance by October 30 here. Stay up to date on this exciting work and encourage your city to join the movement here.

This blog was originally published on WRI's Insights.

Todd Gartner is the Director of Cities4Forests and WRI's Natural Infrastructure Initiative.

Ben Christensen is a former Carbon Removal Research Intern at World Resources Institute. ❖

Why do trees planted in sidewalks fail to establish?

Henry Mayer, UF/IFAS Miami-Dade Urban Commercial Horticulture Extension Agent

How many times have you noticed that a tree just planted in the middle of a sidewalk is deteriorating? What is the average lifespan of a tree planted in a sidewalk? Does the tree have enough room to grow up and down? These questions are often not addressed, so the trees planted in a sidewalk eventually weaken and die.

In order for a tree to establish and grow, the soil, air and water requirements must be met. Since the soil provides the tree with support, as well as water, air and nutrients, the soil volume quantity and quality are critical. Different species of trees will require different soil volumes to reach maturity, but as a general guideline 1,000 ft3 (28 m3) of soil is a pretty good target to aim for. Another rule you can use is 2 cu. feet of soil per square foot of canopy (2 ft3 of soil / ft2 of canopy).

Unfortunately, not all areas can provide this type of soil volume for every tree. Budgets and site limitations are factors in the final decision. To overcome those limitations, a good landscape design is the foundation! Remember, small trees or palms in small spaces and medium size trees and palms in large places. It sounds very simple but how many times you have seen big trees like live oaks planted in a 4'x4' sidewalk cutout with no root space?

A good strategy to overcome soil limitations is to plant trees that share corridors from tree wells to nearby volumes of soil like lawns and parks, or to use engineered hardscape solutions like suspended pavement, silva cells, structural soil or others.

In any case, the minimum dimensions for cutouts in sidewalks to accommodate root flare on trees of various sizes are:

- large maturing trees 8 x 8 feet
- medium sized trees 6 x 6 feet
- small stature trees 4 x 4 feet

And the minimum width of sidewalks are:

- large maturing trees 9 feet
- medium sized trees 7 feet
- small stature trees 6 feet

Just following these recommendations, we can get much closer to getting our city's trees what they need.

Literature Review

- 1.- Street Tree planting Standards City of Berkeley https://www.cityofberkeley.info/uploadedFiles/Parks
 Rec_Waterfront/Level_3_- Trees_and_Parks/City%20
 of%20Berkely%20Tree%20Planting%20Standards.pdf
- 2.- Sidewalk and hardscape solutions https://hort.ifas.ufl.edu/woody/urban-sidewalk.shtml
- 3.- DeepRoot Green Infrastructure for your community https://www.deeproot.com/blog/blog-entries/how-much-soil-do-you-need-to-grow-a-big-tree
- 4. Promoting root growth in sidewalk cutouts https://hort.ifas.ufl.edu/woody/promoting-root.shtml



Figure 1.- Bad design, large trees too close to the building. Photo courtesy of H. Mayer.

¿Por qué los árboles plantados en las aceras no siempre se establecen?

Henry Mayer, UF/IFAS Miami Dade -Urban Commercial Horticulture Extension Agent

¿Cuántas veces has notado que un árbol recién plantado en medio de una acera se está deteriorando? ¿Cuál es la vida útil promedio de un árbol plantado en una acera? ¿Tiene el árbol suficiente espacio para crecer hacia arriba y hacia abajo? Estas preguntas a menudo no se abordan, por lo que los árboles plantados en una acera eventualmente se debilitan y mueren.

Para que un árbol se establezca y crezca bien, deben tener suficiente suelo, aire y agua. Dado que el suelo proporciona el apoyo al árbol, así como agua, aire y nutrientes, la cantidad y calidad del suelo son críticas. Diferentes especies de árboles requerirán diferentes volúmenes de suelo para alcanzar la madurez, pero como pauta general, 1000 pies cubicos (28 m3) de suelo es un valor Bueno para llegar. Otra regla que puede utilizarce es 2 pies cúbicos de suelo por cada pie cuadrado de copa (2 pies3 de suelo / pie2 de copa).

Desafortunadamente, no siempre se puede proporcionar este tipo de volumen de suelo para los árboles. Los presupuestos y las limitaciones del sitio son factores que afectan siempre. Para superar esas limitaciones, un buen diseño que tome en cuenta el tamaño del arbol y el volume del suelo son la base! Recuerde, árboles o palmeras pequeñas en espacios pequeños y árboles o palmeras de tamaño mediano y grandes en lugares grandes! Suena muy simple, pero ¿cuántas veces has visto árboles grandes como oaks plantados en un recorte de acera de 4'x4 'sin espacio para las raíces? Una buena estrategia para superar las limitaciones del suelo es plantar árboles que compartan los lugares de siembra con volúmenes cercanos de suelo sembrados con céspedes o en parques, o utilizar soluciones de ingenieria como pavimento suspendido, celdas silva, suelo estructural u otros.

En cualquier caso, las dimensiones mínimas de los recortes en las aceras para acomodar las raíces y cuello de los árboles son:

- árboles adultos grandes 8 x 8 pies
- árboles de tamaño mediano 6 x 6 pies

• árboles de pequeña estatura - 4 x 4 pies

Y el ancho mínimo de la aceras es:

- árboles adultos grandes 9 pies
- árboles de tamaño mediano 7 pies
- árboles de pequeña estatura 6 pies

Con solo seguir estas recomendaciones, podemos conseguir que los arboles sobrevivan mejor las condiciones de nuestras ciudades!

Revisión de literatura

1.- Street Tree planting Standards – City of Berkeley https://www.cityofberkeley.info/uploadedFiles/Parks_
Rec_Waterfront/Level_3_-Trees_and_Parks/City%20
of%20Berkely%20Tree%20Planting%20Standards.
pdf

- 2.- Sidewalk and hardscape solutions https://hort.ifas.ufl.edu/woody/urban-sidewalk.shtml
- 3.-DeepRoot Green Infrastructure for your community https://www.deeproot.com/blog/blog-entries/how-much-soil-do-you-need-to-grow-a-big-tree
- 4. Promoting root growth in sidewalk cutouts https://hort.ifas.ufl.edu/woody/promoting-root.shtml



Figure 1.- Mal diseño, árboles grandes demasiado cerca del edificio. Foto cortesía de H. Mayer.

Sidewalks continued from page 12 Aceras continued from page 13



Figure 2- Improper planning and design. Photo courtesy of H. Mayer. Figura 2- Planificación y diseño incorrectos. Foto cortesía de H. Mayer.



Figure 3.-Big trees in small soil spaces are a recipe for disaster. Photo courtesy of H. Mayer.

Figura 3 - Los árboles grandes en espacios de suelo pequeños son una receta para el desastre. Foto cortesía de H. Mayer.



Figure 4.- Tree grates are detrimental and too expensive. Photo courtesy of H. Mayer.

Figura 4.- Las rejillas para los árboles son perjudiciales y demasiado caras. Foto cortesía de H. Mayer.

News From International

INTERNATIONAL VIRTUAL CONFERENCE REGISTRATION

Have you registered yet for the ISA 2020 International Virtual Conference? This virtual event provides a lineup of more than 45 on-demand educational breakout sessions and more than 25 available CEUs. Click here to register.

INTERNATIONAL VIRTUAL CONFERENCE AGENDA and SPEAKERS

The list of speakers and the agenda for the ISA 2020 International Virtual Conference is available! To view the agenda, please visit the <u>ISA website</u>.

CREDENTIAL HOLDERS

ISA credential holders are responsible for understanding the requirements to maintain their credentials with ISA and monitoring their CEU status and submission requests for data entry. You can find the requirements to renew your credential in the <u>application guide</u> (see page 7) and webpage for the type of credential(s) you have earned.

Some of your CEU opportunities may be offered virtually (online) now. If the host did not get a pre-approval code for their event, you can still submit for the CEUs post-event. These post-event requests are now only done online through the Post-Approval Portal. You can see a list of what types of events are eligible through this link.

REMEMBERING HYLAND R. JOHNS

It was with great sadness that we announced that Hyland R. Johns, ISA past ISA president, passed away at the age of 95 during August.

Hyland served as president of the ISA Board of Directors in 1977, and was a long-time volunteer with ISA and the TREE Fund. Recently, he was working with ISA to document his knowledge and history of the organization.

Hyland's knowledge, passion, and leadership will be missed by our ISA team and the entire arboriculture community.

FLORIDA CHAPTER TREE CLIMBING CHAMPIONSHIP

March 13-14, 2021 Orlando, FL



FCTCC Arbor Fair Chair: Bonnie Marshall, <u>bonnie.marshall@juniperlandscaping.com</u> FCTCC Climbing Chair: Adam Jackson, <u>adam.jackson@redwingcompany.com</u>

Important Note: Competitor space is limited to 40 in-state and out-of-state competitors (no more than 4 out-of-state allowed)"

FEES:

- \$75.00 Florida Chapter Member *Winner of the Florida Chapter TCC will need to be a member of International ISA in order to compete at the International TCC"
- \$125.00 Non-Member **=ncludes Florida Chapter membership for 12 months!

Check floridaisa.org for details in early 2021 as we continue to assess whether COVID restrictions might affect our event.

Trees Great and Small

Eric Hoyer, Citrus County Chronicle, Oct 18, 2020

Trees come in all shapes and sizes. One extreme is the towering Redwoods and Giant Sequoias. Although they grow in a similar region of the United States, they are two separate species. The Giant Sequoia, Sequoiadendron giganteum, are considered the largest trees on earth. They occur only on the western slopes of the Sierra Nevada mountains in California and are limited to an area less than 36,000 acres. They average 164 to 279 feet in height and can have diameters up to 20 to 26 feet. Then oldest known tree is 3,200 to 3,600 years old.



Sequoiadendron giganteum – Giant Sequoia: Caleb Slemmons

A related, but different species and genus, is the Redwood, Sequoia sempivirens. This species is considered as the tallest tree on earth, reaching heights of 379 feet and up to 29 feet in diameter. They are found along the Pacific Coast from south of San Francisco to the California/Oregon border. The oldest known tree is approximately 2,200 years old.

Water reaches the great heights of both species through negative pressure. They supplement water from the soil with fog, taken up through air roots at heights where water cannot be pulled.

The Baobab, Adansonia digitata, is known as the tree of life. It is native to Madagascar, Africa and Australia and is one of the most long-lived vascular plants on earth. Its flowers bloom for a maximum of 15 hours. The tree can reach heights of 100 feet with small crowns and have trunks up to 30 to 50 feet in diameter. The trunks can store up to 32,000 gallons of water to endure drought conditions. Some individuals have been documented to be over 2,000 years old. The Baobab is an ancient tree,

dating back over 200 million years. The fruit is the only one in the world that dries naturally on the tree for six months. This fruit is nutrient-rich and ripens during the dry season when everything else is arid and parched — hence the moniker, "tree of life."

The Kapok tree, Ceiba pentandra, is native to rainforests of Mexico, Central and South America, and West and Central Africa. It can reach heights of 240 feet and can grow as much as 13 feet in one year. The trunks have long, conical spines. The silky fibers of the fruits are used for bedding and life preservers. A vegetable oil can be extracted from the seeds and extracts from the bark have been used as diuretics, aphrodisiacs, and to cure headaches and Type II diabetes. The tree is characterized by long buttress roots which can extend outward to 65 feet from the trunk as well as 40 to 50 feet up the trunk.

On the opposite extreme is the world's smallest tree, the Dwarf Willow, Salix herbacea. This tiny tree grows to a mere 1 to 6 centimeters in the harsh environment of the North Atlantic coast. However, to take advantage of the short growing season, it has leaves which are .3 to 2 centimenters in length, or about one-third the size of the tiny tree itself. The tree produces a single woody stem, leading some people to classify it as a tree. Males produce yellow fruit and females a red fruit. It can survive



Salix herbacea – Dwarf Willos: Carl Farmer

Trees continued on page 17

Trees contined from page 16

from sea level up to approximately one-mile elevation.

There are also several smallish trees, but not to the extreme of the Dwarf Willow above. One of these trees which can be grown in our area is the Weeping Eastern Redbud, Cercis canadensis. Unlike the common Redbud, which reaches heights of 25 to 30 feet, the weeping varieties are no more than 4 to 10 feet and about the same width. There are several varieties, including Ruby Falls, which has purple flowers; Whitewater, whose leaves emerge white and then become variegated; and Pink Heartbreaker, which produces lavenderpink flowers. This small tree can be planted in tight spaces near the house or in a patio.

One other small tree which can be planted in our area is a variety of the magnolia known as the Royal Stat magnolia, Magnolia stellata. Unlike the larger southern magnolia, this tree loses its leaves in the winter and bursts into bloom with white double flowers in the spring prior to leaf-out. It is a multi-trunked tree, reaching heights of only 10 to 20 feet with a spread of 15 to 20 feet. This tree is used as a specimen or accent tree in the landscape.

Like people, trees come in a variety of shapes and sizes. Regardless of their size, they all provide us with a variety of benefits — beauty, shade, cooling, home for birds and wildlife, producing oxygen, and so much more.

Eric H. Hoyer is a certified arborist, a certified forester, a registered consulting arborist and a qualified tree risk assessor with Natural Resource Planning Services Inc. He can be contacted at erich@nrpsforesters.com. •



To advertise in the Florida Arborist contact the Florida Chapter office at 941-342-0153.

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INDUSTRY NEWS

UF Scientists make big stride toward greening-resistant citrus trees



University of Florida scientists achieved a major milestone in their quest to develop a citrus greening-resistant tree by sequencing the genome of a fruit plant that's a close cousin to citrus trees.

You'd need to print 54,000 pages of copy paper to see the complete genome sequence. But within it, scientists believe they've found genes to lay the groundwork to make citrus more tolerant and even resistant to certain diseases, including citrus greening.

UF/IFAS researchers sequenced the genome from trifoliate orange, in collaboration with scientists from the University of California at Berkeley, the U.S. Department of Energy's Joint Genome Institute and UF's Interdisciplinary Center for Biotechnology Research. The new genome will help those who breed new citrus trees that will survive under today's challenging conditions, including invasive pests, viruses and changing climates. Their research provides a powerful new tool to control the deadly consequences of the greening disease, which has severely damaged the state's multibillion dollar-ayear citrus industry.

"Very importantly, trifoliate orange and its hybrids have genes that can confer high tolerance to citrus greening and resistance to the Asian citrus psyllid, the insect that transmits greening to citrus," said Zhanao Deng, a professor environmental horticulture and a senior author on the new UF/IFAS-led study. "This genome can be used as a reference template to sequence widely used trifoliate orange hybrid rootstock varieties."

"Most people – even citrus growers – rarely see trifoliate orange. This is because they usually are the rootstock part of the tree, mostly underground," said Fred Gmitter, a UF/IFAS professor of citrus breeding genet-

ics and a co-author on the study.

Trifoliate oranges or their hybrids are grown at nurseries, and farmers use them as rootstock to grow the citrus that's above ground. Trifoliate orange and its hybrids were used as the rootstock for more than three million citrus trees in Florida alone in 2018-2019, UF/IFAS researchers say.

Trifoliate orange and its hybrid rootstocks accounted for 82% of the top 20 rootstocks used in the 2018-2019 citrus propagation cycle in Florida.

"Our trifoliate orange genome will allow scientists to develop new tools that can more speedily transfer beneficial genes into sweet oranges, grapefruit and breeding of new scion cultivars, which grow above the ground," Deng said.

"Releasing the first trifoliate orange genome can be valuable for our citrus gene-editing efforts," Gmitter said. Scientists are using gene editing to produce canker-resistant and greening-tolerant citrus.

"Because of our high-quality genome, re-sequencing of trifoliate orange hybrid rootstock varieties will be much easier, much quicker and much more cost-efficient," said Deng. "Re-sequencing will enable development of new breeding tools, such as DNA marker-based selection, genomic selection of new rootstock varieties with resistance and tolerance to citrus greening, citrus tristeza virus and citrus nematodes. The new varieties might give higher yield and fruit quality."

Citrus breeders want to introduce desirable genes from trifoliate orange into sweet orange, grapefruit and other varieties. It took decades to produce the first citrus scion variety ('Sun Dragon') from crossing trifoliate orange and transferring some of its genes across multiple generations into sweet orange. With this new information from genome sequencing, that timeline can be dramatically reduced.

This project was funded by two grants from the Citrus Research and Development Foundation (CRDF) and a grant from the USDA/NIFA Citrus Disease Research and Extension (CDRE) program. To see a video about the research and its implications, click here.

Garden Help: Trees quietly provide many essential services Larry Figart, UF-IFAS Duval County Extension, for the Jacksonville Times-Union



The Treaty Oak near the South bank of the St. John's River in downtown Jacksonville.

Trees improve the quality of life by fighting climate change, reducing air pollution and Helping us feel better.

Larry Figart, UF-IFAS

In this day and age, we hear the term "essential services" a lot when talking about things we ought to spend our money on. For most of us, trees would not even break the Top 10 when listing essential services. It is surprising the ecosystem services that trees in our urban areas provide us.

Ecosystem services can be defined as the benefits to human beings provided by the environment. If asked "what benefits do trees provide?" many of us would reply that they provide beauty, or that they give us shade and oxygen. Some may say that they provide lumber or paper.

All those statements are true; city trees quietly provide us with many services that are very important in today's urban environment.

Let's begin with the some of the more well-known services. Trees can increase the value of property. A yard with large healthy trees growing in it has a greater curb appeal than a yard with no trees. A healthy landscape

that includes trees can increase property value by 10-20 percent. Research has also shown that the closer that a home is to a forested area, the higher its value.

Trees can help us save energy. According to the United States Dept. of Agriculture, the net cooling effect of a young, healthy tree is equivalent to 10 room-size air conditioners operating 20 hours a day.

The placement of trees in the landscape is important as well. The warmest part of the day in the summer occurs between 1 and 3 p.m. when the sun is in the southwest sky. A tree planted on the southwest side of our homes will help to shade our homes during the hottest part of the day thereby reducing our air conditioning costs. Not only does

this save us money in air conditioning but it reduces the strain on the electric grid during the time of peak energy use.

We have all heard about the government's stimulus package, but did you know that trees have been providing an economic stimulus package for our communities long before it became a government priority? Trees can attract patrons and increase visitation to retail businesses. This was highlighted in a survey of one Southern community conducted by Kathleen Wolf, where it was found that the public preferred to patronize commercial establishments and spend up to 12 percent more where those structures and parking lots were beautified with trees and other landscaping.

It may be of interest to some that Jacksonville's urban forest saves us tax dollars. In Jacksonville we get a lot of rain. The runoff from rainfall is stored in retention ponds so it can be slowed down and treated before it

Garden Help continued from page 19



gets to the St. Johns River.

Shade provided by trees can bring a significant reduction in home energy Costs.

Tyler Jones, UF-IFAS

Our urban trees serve as mini retention ponds by helping to control runoff as the rain falls by intercepting and holding rain on leaves, branches and bark, increasing infiltration and storage of rainwater through the tree's root system, and reducing soil erosion by slowing rainfall before it strikes the soil.

The results of a recent study by the Green Infrastructure Center Inc. found that the citywide tree canopy is 55.5 percent. During an average volume rainfall event in Jacksonville, the city's trees take up an average of 1.4 billion gallons of water. Without these trees, the cost of building stormwater retention ponds and other infrastructure to handle the increase in stormwater runoff would run up to 2 billion dollars. dollars.

Trees improve our quality of life in Jacksonville. They do this by fighting climate change, reducing air pollution and helping us feel better. Jacksonville's urban trees are helping to fight climate change by reducing the amount of carbon dioxide in the atmosphere. For instance, using the National Tree Benefit Calculator (http://www.treebenefits.com/calculator), a 12-nch diameter maple tree can lock up 278 pounds of carbon by storing it in its branches, trunk, and roots.

Trees also help to prevent the addition of carbon dioxide into our atmosphere by reducing emissions from power plants due to reduced energy use. In Jacksonville, trees sequester 69,000 total pounds of carbon a year. This carbon storage may not solve the climate change issue, but it shows that trees can be a part of the solution.

Trees have little openings in their leaves called stomata. These stomata allow for air exchange within the leaf. These stomata filter air pollutants out of the air. The air pollutants intercepted by trees include sulfur dioxide, nitrogen dioxide, ash, dust, and smoke particles.

Besides filtering out air pollution, trees provide us with oxygen as a by product of photosynthesis. The same 12-inch diameter red maple example provides \$3.12 of benefit by improving air quality. With diseases like asthma, respiratory disease, heart disease all made worse by air pollution, trees provide valuable health benefits by improving our air quality.

Finally, trees provide services to our physical wellbeing and safety. A few of the recent findings of tree research include:

- People that live in areas with plenty of greenery are more likely to be physically active and less likely to be overweight.
- On tree lined streets people drive slower, reducing accident risk.
- Urban landscaping including trees lower crime rates.
- Homes surrounded by well-maintained trees have less roof damage during storms and hurricanes.
- Visual exposure to settings with trees can reduce blood pressure and muscle tension.

Our urban forest is more than just pretty trees. The services our urban trees provide are invaluable. There are opportunities in Jacksonville for you to get involved in our urban forest. They are planting more trees in your own landscape, volunteering for tree plantings at your local school or park or becoming a voice for trees by joining a tree advocacy group.

By taking the services of trees into consideration, we all can contribute to the quality of life in Jacksonville.

Larry Figart is urban forestry extension agent with the University of Florida/IFAS. ❖

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From Your TREE Fund Liaison Chair - Bill Armstrong

TREE Fund Achieves Highest Rating Again

For the second consecutive year, the TREE Fund has reached Guidestar's highest level of achievement for nonprofit transparency—the platinum award. GuideStar is the world's largest and most authoritative source of information on nonprofit organizations. Major donors tend to look to GuideStar as the "seal of approval" before making donations.

Leading Thoughts

by Russell K. King, TREE Fund President and CEO

As the TREE Fund begins to forge a new and more robust future, we are asking you who have supported it for so long to help in new ways. Last month, I wrote of some direct ways to help and the month before was about indirect ways. This month, let's talk about how you can help with "intel gathering" (on social media it's called "research," but I like to save that word for what scientists and academics do).

If every TREE Fund supporter provided just one of the following contacts in 2020, we would have a great start at making real progress. With this information, we can forge new partnerships, open doors to a wide array of new potential individual donors, and raise the TREE Fund's brand awareness.

Identify foundations. Such foundations may be attached to surprising entities, such as insurance companies, financial planners, banks, service organizations, etc. Please provide the name of the foundation, the URL, and any specific contact information (person's name, email address, mailing address). Include any information you gather that may be helpful, such as guidelines, limitations, and applications processes.

Identify related organizations. Organizations involved in, advocating for, or otherwise supporting trees, forests, urban forests, landscapes, arboretums, parks, public gardens, nature preserves and sanctuaries, forest therapy (aka forest bathing, Shinrin-Yoku), the environment, hu-

man health and wellness. This might also include arboretums, research groups, academic and industrial research departments, and universities, as well as clubs and social media groups. Please provide the name of the organization, the URL, and any specific contact information (person's name, email address, mailing address). Include any information you gather that may be helpful in making an "ask."

Identify businesses seeking to express "green values." Often, these are customers or vendors or your employer, but there's no reason to limit yourself to those. Please provide the name of the business, the URL, and any specific contact information (person's name, email address, mailing address). Include any information you gather that may be helpful in making an "ask," such as conversations you've already had or evidence that the company wishes to position itself as "green."

Identify customers or others you may know who are either famous or wealthy who identify as "green." Please provide the name of the person and any contact information you can. Include any information you gather that may be helpful in making an "ask," such as conversations you've already had or evidence that the person sees their self as "green."

Identify companies related to bicycling, home fitness, general fitness, sports nutrition, etc. We will approach these entities about supporting the Tour des Trees. Please provide the name of the business, the URL, and any specific contact information (person's name, email address, mailing address).

Of course, if you have other ideas, please follow up and let me know. In the meantime, please continue to help spread the word. Thank you!













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by Joe Samnik, Expert Forensic Arborist

AS THE HOUSE BILL 511 TURNS



Much has been written and discussed regarding Florida Statue 163.045. And, unless you've been on a deserted island somewhere you no doubt recognize this bit of misfortune for our industry and those good people who stand guard at the gates of reason and argue against those certified arborists and landscape architects who nefariously claim a tree is a danger and therefore may be removed without a permit, or mitigation requirements.

Most recently, in Tampa, Florida, a certified arborist proclaimed that 20 Protected trees, and 8 Grand trees were removed under the safety of FS163: aka, "A 163 Letter". In this and every instance, all removal permits, reviews, mitigation requirements, and other criteria associated with orderly removal of trees is by-passed under FS163. Just write a quick report and remove the tree(s). No worries.

The issue in the past, and going forward, is that by the time any questions are raised regarding the legitimacy of the subject tree being a danger, the trees are long gone. And with them being gone from the site, their actual condition cannot be determined.

Except for the matter at hand.

In this instance, a tag team of certified arborists joined to remove the subject 28 trees in Tampa, Florida. The trees were reported to be removed in one day: perhaps two days. By the time, the good Eity of Tampa foresters, and our colleagues, became aware of the issue, the trees were gone. But this time there were some differences in the scenario. A short time prior to the removals, I had completed a thorough examination of all but one of the subject trees. And solidified my findings in a written report, with photographs, to city council. In my opinion, all but one of the subject trees were in acceptable condition. Yet another arborist also came to the same conclusions I had arrived at.

A hearing was convened with a special magistrate preceding. Joining me were our colleagues from the City of Tampa. After testimony and cross examination were completed, a guilty verdict was announced with 9 Conclusions of Law. Perhaps chief among them, that the property was not residential and therefore not under the umbrella of the statue. The fact that my analysis, and those of others, including the certified arborists with the City of Tampa, showed the subject trees to be in acceptable condition played hard on the legitimacy of the defendant arborists that the trees were a hazard.

The penalty phase, and fines for the removals are scheduled for the end of October. A copy of the Ruling is below.

The next step for me and another is to file an ethics complaint with the International Society of Arboriculture against the tag team arborists, or one of the two arborists, associated with this matter.

The future of Florida Statue 163 is aggressively being challenged by competent associations here in Florida. To many the subject Statue makes sense and is of legitimate consequence. One must never forget the derivation of this Statue was to circumvent the disregard for human safety, health, and welfare juxtaposed to government arborists who insisted on a hardline approach to code enforcement regarding the removal of a tree at risk for failure with a hurricane baring down on the tree owner. On its own merit, the Statue made sense. It is and was the interference of those seeking to take advantage of this Statue for their personal benefit that the trouble began and continues to be troublesome.

Your board of directors is aware of this matter and seek to assist others in the attempts to eliminate those in the marketplace with other ideas of how to implement the current Statue.

I do wish you and your families good fortune and safety during these dark and troubling times.

<u>Click here to see the recent legal judgment</u> ❖

Welcome!

New Florida Chapter Members

Here are the individuals that joined the Florida Chapter during the third quarter of 2020. If you see a name from your area of the state, look up their phone number online* and give them a call. Introduce yourself and find out what aspect of arboriculture the new member is involved in. Let's make the Florida Chapter friendlier. We're all working in different ways for the same goals. Get to know other Chapter members. You might make some helpful connections for the future.

Alejandro Datorre, Southwest Ranches, FL Brenna Nipper, Naples, FL Brittany Holmes, Saint Petersburg, FL Caleb Baker, Lake Helen, FL Camille Schillizzi, Fort Lauderdale, FL Candice Marie Duffey, Brandon, FL Corey McDonough, Fort Myers, FL Daniel Tavares dos Santos, Oakland Park, FL David Reinikainen, Plantation, FL Dondra Owens, Tallahassee, FL Eric Mims, Port Orange, FL Esmeralda L. Lara, Bonita Springs, FL Felix M. Concepcion, Temple Terrace, FL Gina Williams, Saint Augustine, FL Gregg Pawley, Miami, FL Gregory Gaskin, Tallahassee, FL Guillermo Rubio, Cutler Bay, FL Jake Mitchell Weldon, Tallahassee, FL James Clay, Welaka, FL

John J. Rohan, Fort Myers, FL Jose Mendez, Wildwood, FL Joshua Belle, Tallahassee, FL Justin E. Linnerooth, Cape Coral, FL Kenneth Dewing, Wildwood, FL Krystee Van Den Bosch, Minnedosa, MB Lindsey Purcell, West Lafayette, IN Luke Little, Fort Myers, FL Michael Arthur O'Neill, West Palm Beach, FL Nicole Perez, Miami, FL Robert Harper, Grand Island, FL Roberto Arturo Jimenez, Orlando, FL Sherry Rightmire, North Port, FL Sierra L. Cook, Minneola, FL Thomas Colby Houston, Kathleen, FL Tracy W. Smith, Wildwood, FL

*Go to http://www.isa-arbor.com, then go to "Members Only" and log in. Then go to ISA membership directory. If you do not know your log in for members only, contact ISA headquarters at (888) 472-8733. Once you log in, you can update your address, check your CEU's, edit or verify Certified Arborist information and search the membership list.

Letters to the Editor

Janet Ramirez, Naples, FL Jessica Wertz, Sorrento, FL Joe Guida, Douglasville, GA

We welcome your thoughts about Florida Arborist articles, about your Florida Chapter, or about tree issues in general.

Email your letters to: jan@floridaisa.org

or mail to: Florida Chapter - ISA 7853 S. Leewynn Court Sarasota, FL 34240

Please remember: Letters should be no longer than 300 words. We reserve the right to condense letters, or to edit as necessary.

An invitation to all members to attend a

Board of Directors Meeting!
Call 941-342-0153
for specific times and locations

Upcoming 2021 Board Meetings - Dates & Locations

- February 19, 2021, location TBD
- April 16, 2021, location TBD
- July 16, 2021, location TBD

Arborist Certification Committee Report

By Norm Easey, Florida Certification Liaison

<u>Click here to view all scheduled exams</u>; clicking on the "state" column will group all Florida exams together for easy searching. The ISA Certified Arborist exam at Pearson Testing Centers throughout Florida.

See the ISA International website <u>www.isa-arbor.com</u> for more information about the various ISA arborist credentials and how to earn them.

Florida Chapter currently has 2103 Certified Arborists.

The Florida Chapter would like to congratulate the following 33 Florida or Florida Chapter individuals for earning their certifications during the 3rd quarter of 2020 as Certified Arborist, Board Certified Master Arborist and Utility Specialist:

Certified Arborist

Caleb Baker, Lake Helen, FL Joshua Belle, Tallahassee, FL Rolland Hubert Bogacz, Lake Worth, FL Bridger Elijah DeMars, Tampa, FL Thomas Donovan, Margate, FL Christopher Enright, Titusville, FL Steven Eyster, Riverview, FL Andrew Gatewood, Jensen Beach, FL Daniel Hall, Inverness, FL Jorden Hinrichsen, Valrico, FL Guillermo Ishida, Land O Lakes, FL Daryl Johnson, Fort Lauderdale, FL Justin E Linnerooth, Cape Coral, FL Victor Molina, Dade City, FL Matthew Posey, Saint Augustine, FL Brennan Vic Silecchia, sunrise, FL Adam Justin Snyder, Plant City, FL Austin Spivey, Deland, FL JB Toorish, Mount Dora, FL James A Tootle, Hilliard, FL Yoandris Vazquez Pupo, Miami, FL Kyle Weiland, Fernandina Beach, FL Jake Mitchell Weldon, Tallahassee, FL Jessica Wertz, Sorrento, FL Richard Yarkin, Coral Springs, FL

Board Certified Master Arborist

Christopher Comer, Fort Myers, FL Timothy B. Kerns, Thonotosassa, FL Douglas LaFortune, Deland, FL Erik Nobs, Clearwater, FL Richard F. Peterika, Tampa, FL Ronald W. Simpson, Cape Coral, FL

<u>Utility Specialist</u>

David L. Craddock, Palm Bay, FL Phillip Poucher, Wauchula, FL



Are you thinking about becoming certified?

Visit the International ISA website

To access the certification application handbook with further information.



Florida Chapter ISA - 2020 Education Schedule

*The schedule below is tentative and subject to changes.

View Florida Chapter Seminars Online

Date	Seminar/Class	Location (s)	Open for Registration
December 1, 2020	TRAQ Renewal 1-day	Clearwater	Reminder
December 2-4, 2020	TRAQ Full course: 3-days	Clearwater	Reminder
POSTPONED	Electrical Hazard	Tallahassee	Postponed to April 2021
POSTPONED	Electrical Hazard	Plant City	Postponed to April 2021
POSTPONED	Electrical Hazard	ZOOM	Postponed to April 2021
POSTPONED	2-Day Arboriculture Short Course	Tampa Area	TBD
POSTPONED	Climber School	Pompano Beach	TBD

International Society of Arboriculture Florida Chapter



Our Mission: "To Promote and Improve the Scientifically Based Practice of Professional Arboriculture"

Arborist Code of Ethics

Strive for continuous self-development by increasing their qualifications and technical proficiency by staying abreast of technological and scientific developments affecting the profession.

Not misuse or omit material facts in promoting technical information, products or services if the effect would be to mislead or misrepresent.

Hold paramount the safety and health of all people, and endeavor to protect property and the environment in the performances of professional responsibilities.

Accurately and fairly represent their capabilities, qualifications and experience and those of their employees and/or agents.

Subscribe to fair and honest business practices in dealing with clients, suppliers, employees and other professionals.

Support the improvement of professional services and products through encouraging research and development.

Observe the standards and promote adherence to the ethics embodied in this code.

