



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.14.

3/23/2021

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### Subject:

Approval; Re: Assignment and Assumption of Memorandum of Agreement between James W. Jensen Living Trust and Brevard County to Satcom Direct, Inc.  
District 3

### Fiscal Impact:

There is no fiscal impact to the General Fund. There are no fiscal impacts to Environmentally Endangered Lands (EEL) Program funds.

### Dept/Office:

Parks and Recreation

### Requested Action:

It is requested that the Board approve and authorize the Chair to execute the Assignment and Assumption of Memorandum of Agreement between James W. Jensen Living Trust and Brevard County to Satcom Direct, Inc.

### Summary Explanation and Background:

On February 7, 2012, the Board entered into a Memorandum of Agreement (MOA) with James W. Jensen Living Trust for a period of twenty-five (25) years to satisfy the scrub mitigation requirements under their permit number SAJ-2011-01760 NWP-LS with United States Fish and Wildlife Services (USFWS). The MOA was for a mitigation project on the Environmentally Endangered Lands (EEL) Malabar Scrub Sanctuary. The purpose of this project is to improve Florida Scrub Jay habitat by reducing the vegetation height, removing hardwoods and providing increased open sandy areas. The initial restoration that was provided through this project was removal of all sand pines, roller-chopping of the understory and a prescribed burn that was completed within one year of the roller-chopping. The site will continue to be managed to maintain open sandy areas. When the MOA was executed, James W. Jensen Living Trust, completed the initial restoration work and gave a one-time management fee of \$15,000 to the County for continued management of the project area within Malabar Scrub Sanctuary.

James W. Jensen Living Trust is now requesting transfer of their MOA, with requirements and obligations to Satcom Direct, Inc. Satcom Direct is the current landowner of the property that is the subject of the current mitigation MOA with the County. Satcom Direct will be assuming and agreeing to be bound by the terms and conditions (including indemnification) of the Agreement that the County has in place with James W. Jensen Living Trust. The United States Army Corp of Engineer (USACE); the permitting agency for the mitigation, required that James W. Jensen Trust perform the initial restoration and complete twenty-five (25) years of monitoring of the achieved conditions on the project area. Satcom Direct will continue the obligations under the permit until 2037. USACE has received the required permit transfer paperwork from James W. Jensen Living Trust to Satcom Direct.

Attached for your approval and signature is an Assignment and Assumption of the obligations under the Memorandum of Agreement between James W. Jensen Living Trust and Brevard County to Satcom Direct, Inc.

**Clerk to the Board Instructions:**

Please return fully executed Assignment and Assumption to Environmentally Endangered Lands (EEL) Program.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

March 24, 2021

**M E M O R A N D U M**

**TO:** Mary Ellen Donner, Parks and Recreation Director

**RE:** Item F.14., Assignment and Assumption of Memorandum of Agreement between James W. Jensen Living Trust and Brevard County to Satcom Direct, Inc.

The Board of County Commissioners, in regular session on March 23, 2021, approved and authorized the Chair to execute the Assignment and Assumption of Memorandum of Agreement between James W. Jensen Living Trust and Brevard County to Satcom Direct, Inc. Enclosed is a fully-executed Assignment and Assumption.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

Encl. (1)

/ns

cc: Finance  
Budget

## ASSIGNMENT AND ASSUMPTION OF MEMORANDUM OF AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION OF MEMORANDUM OF AGREEMENT** (this "**Assignment**") is made and entered into as of the date of last signature below, by and between James W. Jensen Living Trust ("**Assignor**") and Satcom Direct, Inc., a Minnesota corporation ("**Assignee**").

### WITNESSETH:

**WHEREAS**, Assignor has agreed to transfer, set over, assign, and convey to Assignee all of Assignor's rights, privileges, duties, and obligations in, to, and under that certain Memorandum of Agreement by and between Assignor and the Board of County Commissioners of Brevard County, Florida ("**County**") having an effective date of February 7, 2012 ("**Agreement**"), which is incorporated herein by this reference, and Assignee has agreed to assume and perform Assignor's liabilities and obligations arising under the Agreement on or after the Effective Date (as defined hereinafter), all in accordance with this Assignment.

**NOW, THEREFORE**, for good and valuable consideration the sum, receipt, and sufficiency of which are hereby acknowledged, and intending to be legally bound, Assignor and Assignee agree as follows:

1. Incorporate Recitals. The recitals set forth above are true and correct and are incorporated herein.
2. Assignment. Assignor hereby transfers, sets over, assigns, and conveys unto Assignee all of Assignor's rights, privileges, duties, and obligations in, to, and under the above referenced Agreement together with any and all rights, powers, and privileges conferred by the Agreement upon Assignor, as a party to the Agreement, and Assignor hereby authorizes Assignee to exercise said rights, powers, and privileges in as full a manner as Assignor is authorized to exercise the same. Unless stated otherwise herein, the terms and conditions of the Agreement shall remain in full force and effect.
3. Consent by County. This Assignment shall not be effective until such time as the County has given written approval to this Assignment pursuant to Section 15 of the Agreement ("**Effective Date**"). County gives its written approval to this Assignment in accordance with Section 15 of the Agreement by executing this Assignment. By executing this Assignment, County also confirms that the Agreement is in full force and effect, that Assignor is not in default of any provision, obligation, or requirement set forth in the Agreement, that Assignee will be assuming all obligations of Assignor thereunder, and Assignor is released from any and all obligations under the Agreement on or after the Effective Date.
4. Assumption. Assignee hereby assumes and agrees to be bound by all of the covenants, obligations, liabilities, and burdens of Assignor under the Agreement which arise on or after the Effective Date and agrees to perform all obligations of Assignor under the Agreement which are to be performed or which become due on or after the Effective Date.
5. Indemnity. Assignee shall indemnify and hold Assignor harmless from any claim, liability, cost, or expense arising out of Assignee's failure to perform any obligations or liability

under the Agreement arising on or after the Effective Date upon which the Agreement is assumed by Assignee hereunder. The County's indemnity and liability obligations shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Assignment or the Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity.

6. Representations and Warranties. Assignor hereby represents and warrants to Assignee (a) that it has full power and authority to assign the Agreement to Assignee, and (b) that the Agreement is in full force and effect and has not been modified or amended in any manner whatsoever.

7. Amendments in Writing. No amendment or modification of this Assignment shall be valid unless the amendment or modification is in writing and signed by Assignor and Assignee and consented to by County.

8. Entire Agreement. This Assignment and exhibits hereto, if any, constitute the entire agreement between Assignor and Assignee, and there are no other covenants, contracts, promises, terms and provisions, conditions, undertakings, or understandings either oral or written, between them concerning this Assignment other than those herein set forth.

9. No Third-Party Rights. Neither this Assignment nor anything set forth herein is intended to, nor shall it, confer any rights on any person or entity other than the parties identified herein, and all third-party rights are expressly negated.

10. Governing Law and Venue. This Assignment shall be interpreted and construed in accordance with and governed by the laws and ordinances of Brevard County and the State of Florida. Venue for any action brought by any party to this Assignment to interpret, construe, or enforce this Assignment shall be in a court of competent jurisdiction in and for Brevard County, Florida.

11. WAIVE RIGHT TO JURY TRIAL. ASSIGNOR AND ASSIGNEE HEREBY WAIVE ANY RIGHT TO JURY TRIAL IN THE EVENT ASSIGNOR AND/OR ASSIGNEE BRING AN ACTION ARISING OUT OF THIS ASSIGNMENT.

12. Attorneys' Fees. If any action or proceeding is commenced by Assignor or Assignee to enforce their rights under this Assignment or to collect damages as a result of the breach of any of the provisions of this Assignment, the prevailing party in such action or proceeding, including, without limitation, any bankruptcy, insolvency, or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court. However, in any action or proceeding involving the County which arises out of this Assignment, the County shall not be responsible for attorneys' fees, costs, or expenses of any other party, and shall only be responsible for its own fees, costs, and expenses.

13. Interpretation. Captions, numbering, and headings of this Assignment are for convenience of reference only and shall not be considered in the interpretation of this Assignment.

14. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

15. Successors. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the date set forth above.

**ASSIGNOR:**

JAMES W. JENSEN LIVING TRUST

By: 

Name: Jim Jensen, Trustee

**ASSIGNEE:**

Satcom Direct, Inc., a Minnesota corporation

By: 

Name: MARTHA H. MCINTOSH

Its: GENERAL COUNSEL + SECRETARY

**CONSENT BY:**

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA

By: 

Name: Rita Pritchett

Its: Chair

Date: March 23, 2021

Reviewed for legal form and content  
for Brevard County

  
Assistant County Attorney

**ATTEST:**

By: 

Name: Rachel M. Sadoff

Its: Clerk

Date: March 23, 2021

**Memorandum of Agreement Between  
The Board of County Commissioners of Brevard County  
And  
James W Jensen Living Trust**

THIS MEMORANDUM OF AGREEMENT, hereinafter referred to as "MOA", is hereby made and entered into by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY", and James W Jensen Living Trust, hereinafter referred to as "JENSEN"

**WITNESSETH**

WHEREAS, COUNTY manages the Malabar Scrub Sanctuary located at 1501 Malabar Woods Blvd, Malabar, FL 32950, hereinafter referred to as the "Property" as depicted on Exhibits B and C, and manages the Property through the Brevard County Environmentally Endangered Lands Program and the Malabar Scrub Sanctuary Management Plan; and

WHEREAS, JENSEN is required, as a condition of Permit SAJ-2001-01756(NWP-LHS), issued by the Army Corps of Engineers (ACOE), to implement restoration on the offsite mitigation project ("Project") to compensate for scrub impacts anticipated in the development by James W. Jensen Living Trust; and

WHEREAS, the proposed restoration plan will enhance scrub function on the Property and is consistent with the goals of the Malabar Scrub Sanctuary Management Plan; and

WHEREAS, COUNTY agrees to allow JENSEN access to the Property for the purposes of implementing restoration as, more particularly described in Exhibit "A" and access for 25 years to conduct the monitoring for the required reporting of the management activities conducted on the Property.

NOW THEREFORE, in consideration of the faithful and timely performance of and compliance with all the terms and conditions stated herein, the COUNTY does hereby grant to JENSEN, the right to use the Property subject to the following terms and conditions:

1. **SCOPE OF AGREEMENT:** This MOA covers the use of the Property for the purposes of implementing the restoration plan required by

ACOE Nationwide Permit (SAJ-2011-01756 NWP-LS) and the US Fish and Wildlife Service Biological Opinion incorporated therein and hereinafter referred to as BO, hereinafter referred to as the SJRWMD Permit. A copy of the restoration plan is attached as Exhibit "A". The terms and conditions of the USFWS BO with respect to restoration are adopted and incorporated into this MOA by reference.

2. **TERM:** This MOA is for a period of twenty five (25) years, commencing on the effective date of this MOA, unless sooner terminated by COUNTY or otherwise extended in writing by both parties to this MOA to coincide with the requirements of the USFWS BO.

3. **UNDUE WASTE:** JENSEN shall not commit undue waste to the premises. JENSEN shall restore landscape features damaged during construction to the satisfaction of the Property's Environmentally Endangered Lands Program Land Manager, as hereinafter referred to as Land Manager.

4. **RIGHT OF INSPECTION:** COUNTY or its duly authorized agent shall have the right at any time to inspect the works and operation of JENSEN pertaining to this MOA.

5. **PROPERTY RIGHTS:** This MOA constitutes permissive use only, and the placing of permanent facilities or related structures upon the premises pursuant to this MOA is prohibited. JENSEN agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this MOA or its occupancy or use hereunder.

6. **USE OF PROPERTY:** This MOA shall be non-exclusive. COUNTY, or its duly authorized agents, shall retain the right to enter the premises or to engage in management activities not inconsistent with the use herein provided for, and COUNTY shall retain the right to grant compatible uses of the Property, subject to this MOA, to third parties during the term of this MOA.

7. **PROHIBITIONS:** In order to preserve and protect the project, COUNTY and JENSEN agree that, except for restoration activities permitted by this MOA, the following activities shall be prohibited within the Property:

- 7.1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structure on or above the



ground.

- 7.2. Dumping or placing of soil or other substances or materials as landfill or dumping or placing of trash, waste or unsightly or offensive material.
- 7.3. Removal or destruction of trees, shrubs, or other vegetation (other than exotics) except that vegetation in the Project area; Diking or any other activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.

8. **MAINTENANCE OF PROJECT:** Upon completion of the restoration or termination of this MOA, whichever comes first, maintenance shall become the responsibility of COUNTY. The COUNTY agrees to accept a one time maintenance fee of \$15,000.00 upon completion of the restoration described in Exhibit A to USFWS permit standards. COUNTY agrees to maintain the Property in a manner that would not adversely impact the current vegetative, hydrologic, and open condition of the Property. Further for up to 25 years, COUNTY agrees to implement management actions as necessary to maintain the property as suitable scrub jay habitat as described in Exhibit A.

9. **LIABILITY:** JENSEN agrees to indemnify and hold harmless COUNTY from all claims, losses and expenses, arising out of or resulting from the performance of the Project, caused in whole or in part by any negligent act or omission of JENSEN, any of JENSEN'S contractors, subcontractors, or any of employees, agents or representatives. JENSEN agrees that it will pay the costs of the COUNTY's legal defense, including fees of attorneys, as may be selected by COUNTY and shall defend, satisfy, pay any judgments which may be rendered against COUNTY in connection with the above hold harmless agreement. JENSEN shall be solely responsible for any liability, damages, costs, fines and administrative or criminal enforcement actions resulting from the relocation of any endangered or protected species required to implement the Project. JENSEN acknowledges specific consideration has been received for this hold harmless/indemnification provision. The duties and responsibilities established in this paragraph shall survive expiration or termination of this MOA.

10. **APPLICABLE LAW AND VENUE:** This MOA shall be interpreted and construed in accordance with and governed by the laws and ordinances of Brevard County and the State of Florida. Venue for any legal

action brought by any party to this MOA to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

11. ATTORNEY'S FEES: In the event of any legal action to enforce the terms of this MOA, each party shall bear its own attorney's fees and costs.

12. AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this MOA and executed by COUNTY and JENSEN.

13. ENTIRE AGREEMENT: This MOA incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this MOA that are not contained in the MOA. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained herein shall be effective unless contained in a written document in accordance with paragraph 12 above.

14. SUCCESSION OF AGREEMENT: This MOA and the rights and obligations contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. ASSIGNMENT: This MOA is personal to JENSEN and may not be transferred or assigned without the prior written approval of COUNTY, however, COUNTY and JENSEN recognize and agree that some or all of the activities permitted under this MOA may be performed by JENSEN or JENSEN'S contractor under separate agreement with JENSEN. Such performance by JENSEN's contractor does not create or impose any duty or responsibility between COUNTY and JENSEN's contractor, nor does it relieve JENSEN of any duty, responsibility, or liability under this MOA.

16. REMOVAL OF DEBRIS: On a daily basis, JENSEN shall clear, remove and pick up all of JENSEN's and its contractor's debris including but not limited to mud containers, oil containers, papers, discarded tools and trash foreign to the work locations and dispose of the same offsite in such a manner as to leave work locations clean and free of any such debris.

17. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this MOA in no way affects either of the parties' obligations pursuant to Chapter 267, Florida Statutes. The Collection of artifacts or the disturbance of archaeological and histories sites on state-owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the Department of State.

18. TRIPPLICATE ORIGINALS: This MOA is executed in triplicate originals each of which for all purposes shall be considered an original.

19. COMPLIANCE WITH LAWS: This MOA is contingent upon and subject to JENSEN obtaining all applicable permits, regulations, ordinances, rules, and laws of the State of Florida, the United States or of any political subdivision or agency thereof.

20. RESPONSIBILITY FOR COMPLIANCE: The parties hereto contemplate the performance of all or a part of the activities authorized herein by JENSEN. Notwithstanding the foregoing, JENSEN shall bear the full and ultimate responsibility and liability to COUNTY for the faithful and timely compliance with the terms and conditions set forth herein.

21. DAMAGE: JENSEN shall not damage the premises, or unduly interfere with public or private rights therein.

22. TERMINATION:

22.1. This MOA will terminate automatically without further action by either Party in the event that the USFWS permit expires prior to commencement of Project construction.

22.2. This MOA may be terminated by COUNTY for cause. Termination pursuant this section shall include, but not be limited to, failure to suitably perform the work or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of COUNTY as set forth in the MOA, or in the event it is determined that termination is necessary to protect the public health, safety or welfare.

22.3 JENSEN, by acceptance of the MOA, binds itself, its successors and assigns, to abide by the provisions and conditions shall be deemed covenants of JENSEN, its successors and assigns. In the event JENSEN fails or

refuses to comply with the provisions and conditions herein set forth or in the event JENSEN violates any of the provisions and conditions herein, COUNTY, shall give notice to JENSEN that curative action must be completed within a thirty (30) day curative period. COUNTY may elect to terminate this MOA by means of a letter of termination. In the event this MOA is terminated by COUNTY, all rights inuring to JENSEN or its successors shall cease upon the effective date of the letter of termination with the exception of those activities necessary to demobilize and remove personnel and equipment. JENSEN'S obligations and responsibilities under paragraphs 24 and 25 of this MOA shall survive termination.

23. All notices given under this MOA shall be in writing and shall be served by certified mail to the last address of the party to whom notice is to be given, as designated by such party in writing. COUNTY and JENSEN hereby designate their address as follows:

JENSEN: James W, Jensen Living Trust \_\_\_\_\_  
1901 Highway A1A \_\_\_\_\_  
Indian Harbour Beach, FL 32937 \_\_\_\_\_  
\_\_\_\_\_

COUNTY: Brevard County Parks & Recreation  
Environmentally Endangered Lands Program  
91 East Drive  
Melbourne, Florida 32904  
Attn: Program Manager

24. REMOVAL OF EQUIPMENT: Upon termination or expiration of the MOA, the removable equipment and removable improvements placed on the premises by JENSEN that have not become a permanent part of the premises and are not desired by COUNTY, shall be removed by JENSEN, at its sole cost and expense, within thirty (30) days after the termination or expiration of this MOA. JENSEN's failure to remove said items within the thirty (30) day time period shall constitute abandonment and all rights there to shall be considered forfeited. Further, JENSEN shall restore the premises to substantially the same or better condition it was upon the effective date of MOA.

25. ENFORCEMENT OF PROVISIONS: No failure, or successive failures on the part of COUNTY to enforce any provision nor any waiver or

successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right to COUNTY to enforce the same upon any extension thereof or in the event of subsequent breach or breaches.

26. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: Fee title to the premises is held by COUNTY. JENSEN shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the premises including, but not limited to, mortgages or construction liens against the premises or against any interest of COUNTY.

27. SEVERABILITY: If any term, covenant, condition or provision of this MOA shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

28. SPECIAL CONDITIONS: JENSEN shall comply with the following conditions which are in addition to the Scrub Mitigation Plan and a part of this MOA:

28.1. JENSEN shall coordinate with and obtain approval of the Land Manager before undertaking any construction, maintenance, or repair activity on the Property.

28.2. It is understood and agreed that the Land Manager shall have the authority to direct JENSEN or JENSEN'S contractor onsite to cease construction of the Project in cases where public safety is at risk or for the failure to meet all permit specifications.

28.3. JENSEN shall not remove or destroy any trees, shrubs, or other vegetation, other than exotics, outside of the restoration site where the mitigation project will take place.

28.7. All monitoring, in conjunction with the permit must be performed by JENSEN.

28.8. If this Project does not satisfy the mitigation requirements of the USFWS Permit, no additional enhancement credit may be claimed without additional areas being enhanced.

- 28.12. JENSEN must obtain a "Notice to Proceed" from the Land Manager prior to initiating any onsite construction activities.
- 28.13. Final approval of construction activities must be obtained from the Land Manager to be in compliance with the USFWS Permit.
- 28.14. The Land Manager must be notified when initial baseline monitoring begins.
29. **INSURANCE:** JENSEN, at its own expense, shall keep in force at all times and maintain during the term of this MOA the following coverage:
- 29.1. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE covering all persons conducting operations on County's Property or on behalf of County.
- 29.2. GENERAL LIABILITY INSURANCE policy with a \$1,000,000 combined single limit for each occurrence to include the following coverages: operations, products and completed operations, personal injury, contractual liability covering this Contract, and "X-C-U" hazards.
- 29.3. AUTO LIABILITY INSURANCE which includes coverage for all owned, non-owned and rented vehicles with a \$1,000,000 combined single limit for each occurrence.
- 29.4. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover County as an additional insured and that these policies may not be canceled or modified without thirty (30) days prior written notice to County.
- 29.5. The insurance coverages enumerated above constitute the *minimum* requirements and shall in no way lessen or limit the liability of JENSEN under the terms of the Contract. Subcontractor's insurance shall be the responsibility of JENSEN.
30. **INDEPENDENT CONTRACTOR:** JENSEN shall perform the services under this MOA as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship

or status. Nothing in this agreement shall be interpreted or construed to constitute JENSEN or any of its agents or employees to be the agent, employee or representative of COUNTY.

31. RIGHT TO AUDIT RECORDS: In the performance of this MOA, JENSEN shall keep books, records, and accounts of all activities, related to this MOA, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this MOA shall be open to inspection during regular business hours by an authorized representative of COUNTY and shall be retained by JENSEN for a period of three (3) years after termination of this MOA. All records, books and accounts related to the performance of this MOA shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

32. EFFECTIVE DATE. This MOA or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until the latest date of execution of the parties.

BREVARD COUNTY

ATTEST:

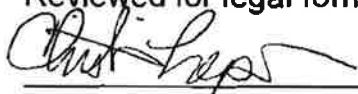
BOARD OF COUNTY  
COMMISSIONERS OF BREVARD,  
COUNTY, FLORIDA

  
Laurie S. Rice, Chief Deputy  
Clerk

By:   
Chuck Nelson, Chairman

As approved by the Board on: 2-7-12

Reviewed for legal form and content:

  
Christine Lepore, Assistant County Attorney  
Date: 1-11-12

James W. Jensen Living Trust

By:   
James Jensen  
Print name

OWNER  
Title



## **Exhibit A**

The project area consists of 26 acres, located at the northwest corner of Malabar Scrub Sanctuary. Malabar Scrub Sanctuary is located at 1501 Malabar Woods Boulevard, Malabar FL 32950. (Exhibits B & C) Within the project area the scrub and scubby flatwoods has become overgrown due to lack of fire for over 30 years, this has allowed the sand pines and saw palmetto to take over. The restoration efforts of this project are to enhance the habitat of the Florida Scrub Jay, by reducing the vegetation height, removing hardwoods and providing increased open sandy areas. The initial restoration that will be provided through this project will be removal of all sand pines, rollerchopping of the understory and a prescribed burn to be completed within one year of the rollerchopping.

The vegetation throughout the project area is extremely overgrown. The understory vegetation must be roller chopped. In addition, sand pines in the area will need to be removed or burned on site at an approved area, in preparation of the prescribed burn. The project is intended to improve wildlife habitat by reducing vegetation height and density followed by a prescribed fire that will reduce fuel loads and provide open sandy areas for the Florida Scrub Jay. The reduced vegetation height will allow the Florida Scrub Jay better protection for predators such as the Cooper's Hawk. This project will allow for the existing Florida Scrub Jays to maximize use of this area and expand the population at Malabar Scrub Sanctuary.

The project goals are to remove 100% of the sand pines. Reduce the amount of slash pines to 5/acre. All downed trees should be removed as well, to reduce the potential smoke issues associated with prescribed fire. To preserve the longleaf and slash pines that are to remain rollerchopping should not take place with fifteen feet drip line of the tree. Drip line is defined as the circle that could be drawn in the soil that outlines the outer most tips of the trees branches.

In order to conduct a prescribed fire the burner must be a Certified Prescribed Burner with the Florida Division of Forestry. To conduct burns to remove debris the contractor must be a Certified Pile Burner with the Florida Division of Forestry. The EEL Program must be notified one day prior to any prescribed burn or pile burn. The EEL Program must approve the fire prescription prior to the prescribed burn. The EEL Fire Manager or approved staff member must be present during the prescribed burn for observation purposes. Debris piles for burning must be approved by EEL staff.

EEL Program staff will meet with contractors prior to the beginning of the project to ensure that all aspects of the project are clearly identified. The contractor will use existing roads and firelines throughout the project area. The contractor will avoid all areas flagged by EEL staff.

**General Conditions:**

- 1) The Contractor shall be responsible for any lost material or damaged equipment staged on site. The Contractor shall be responsible for damages to existing EEL Program fencing or to adjacent properties. It shall be the responsibility of the Contractor to keep gates closed and locked at all times, including while working on site and upon leaving the project site.
- 2) There shall be no earthwork or excavation of soils, unless authorized in writing by a County representative. Such authorization, or failure to authorize, shall not constitute a change in contract price or time.
- 3) Soil disturbance within the Sanctuary during equipment loading and unloading shall be avoided. If soil rutting does occur during equipment turn-around, the Contractor, to the County's satisfaction, shall grade these disturbances.
- 4) The Contractor shall be responsible for identifying (locate) all utilities along the fire line. Utilities damaged by Contractor shall be the responsibility of the Contractor.
- 5) All equipment shall be cleaned prior to entering the Sanctuary and prior to commencement of work and shall be free of potential exotic species to avoid transference to the project site. EEL Program staff reserve the right to inspect the equipment prior to commencement of the project.
- 6) Any trash brought on site shall be removed at the completion of the project. All spills of oil, fuel, or grease from machinery or during refueling and maintenance of equipment will immediately be contained and cleaned up by the Contractor
- 7) The Contractor shall not commence work until receipt of the Notice to Proceed from Brevard County Parks & Recreation Construction and a pre-construction site meeting.
- 8) The Contractor shall tour the project area with a representative of Brevard County Parks & Recreation Construction and a representative of the Brevard County EEL Program after project completion for final project acceptance and payment.
- 9) The Contractor and any hired Subcontractors shall have a printed copy of these Technical Specifications in their possession when working on the Sanctuary.
- 10) Contractor's Workers Comp, Liability Ins. & current License information to be submitted with Bid. Contractor to submit a minimum of three (3) references for LIKE KIND of work completed within the last 5 years with Bid.
- 11) All Sub-Contractors to be used on this project are required to submit Worker Comp, Liability Ins. and current License.
- 12) Notarized Lien releases will be required from Contractor, Sub-Contractors, Material and Equipment Vendors for Final Completion (signed and notarized originals required).
- 13) Contractor shall examine the site carefully and notice existing conditions before submitting Bid. Failure to do so SHALL NOT entitle the Contractor to any allowances due to ignorance of existing conditions.
- 14) Upon Notice of Award, Contractor will submit (within 10 days) a List of Sub-Contractors, Vendors and a Construction Schedule. Work to commence no later than 10 days after Notice to Proceed.
- 15) In case of inclement weather where damage to the Sanctuary could be caused by heavy equipment or when change orders are requested by Owner, the project manager or EEL's staff may extend the Contract Final Completion date by the number of days necessary to compensate for the lost days.
- 16) Contractor is responsible for ALL permits required to complete this project.

**Mechanical Vegetation Reduction:**

- 1) Vegetation reduction will be done using a roller chopper operated in such a manner as to accomplish effective chopping while minimizing soil disturbance. The Contractor will list the type of roller chopper that will be used on site within the bid. Equipment used to pull the chopper may be either rubber-tired or tracked. If rubber tired equipment is used, it is strongly recommended that they be forestry grade to avoid flat tires. The County will not be responsible for tire failure. If tracked equipment is used, the operator must use gentle turns to prevent the creation of pressure ridges in sandy soils.
- 2) The project manager reserves the right to determine the amount of water weight to be added to the drum throughout the project. It is preferred that there be zero gallons of water in the drum.
- 3) The entire unit will be chopped to reduce at least 70% of understory vegetation. In areas where tall scrub occurs, the equipment must be able to push over and roller chop scrub oaks and other associated vegetation.
- 4) All roadways, fire lines and adjacent areas must be kept clear of debris and windrows of soil, vegetation, or soil mixed with vegetation.
- 5) Areas composed primarily of herbaceous grasses must be avoided. It is critical that all wetlands remain undisturbed. **In order to ensure that untargeted pines are not damaged, a buffer of vegetation within the drip line plus 15 feet will remain untreated around each longleaf or slash pine. Zero chopping will occur within the drip line plus 15 feet of any slash or longleaf pine.**
- 6) Roller chopping equipment must not be used on roads and fire lines. Chopper equipped with hydraulic wheel lift preferred.
- 7) EEL program staff will provide maps to the contractor and/or flag any areas that must not be treated within the project area.
- 8) Heavy equipment should stay out of any marked areas.
- 9) Contractor should list all equipment to be used in the bid package.

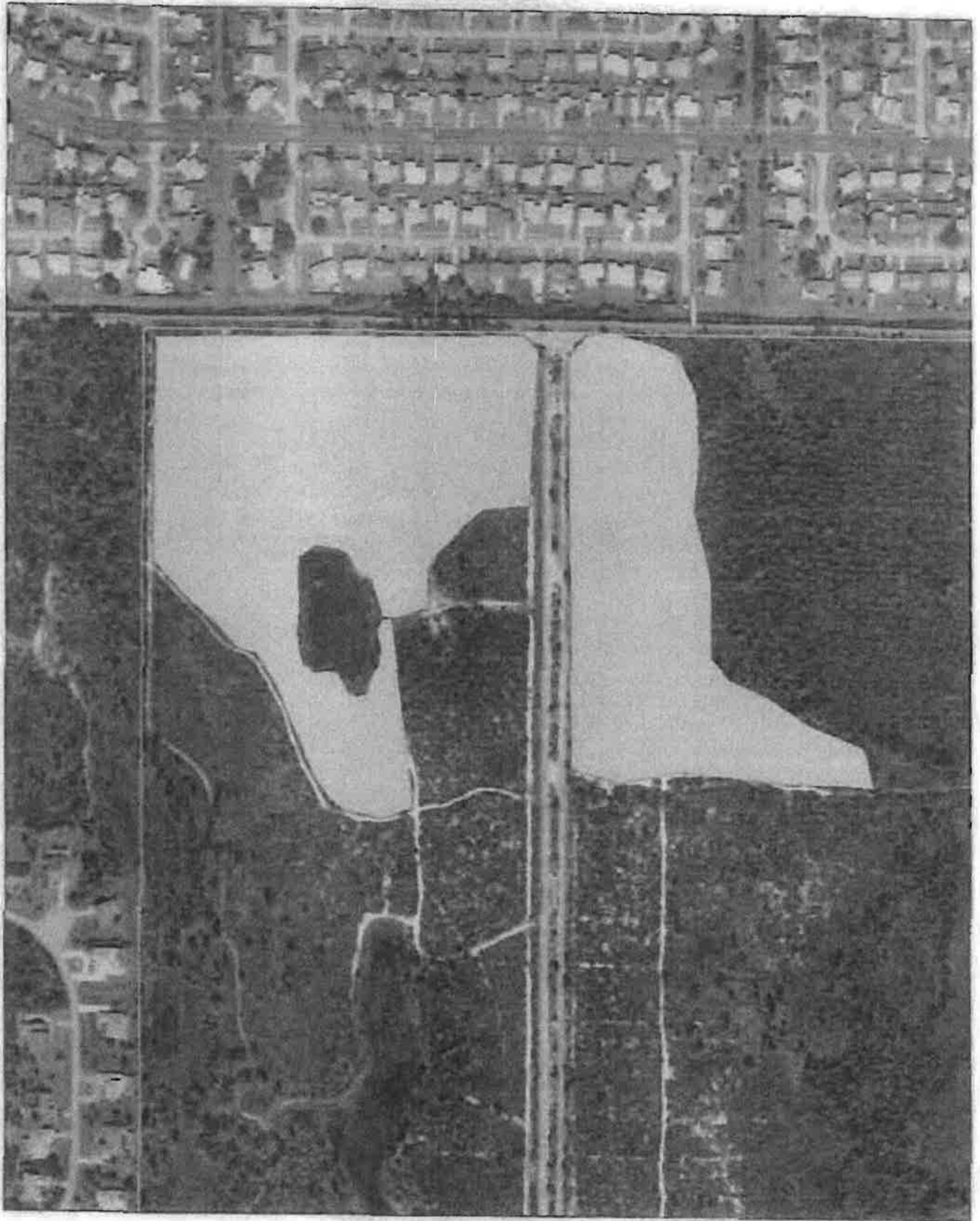
### **Pine Removal**

- 1) Timbering of long leaf and slash pines shall be conducted in a way to leave 5 pines per acres of varying age.
- 2) All standing sand pines are to be removed in the project area. Any downed or dead standing are to be removed as well.
- 3) Access by equipment and designation of staging areas must be done a way to minimize disturbance. Repairs of damaged roads, firebreaks and fences shall be the responsibility of the contractor. The EEL Program and the contractor will determine staging sites prior to the project starting.
- 4) Disturbance to wetlands must be avoided, any damages to wetlands will be the responsibility of the contractor to repair.
- 5) The vegetative debris resulting for the timbering shall be burned on site or removed from the property. It is understood that the timber has no market value. EEL staff will not be responsible for the burning of debris piles or removal.
- 6) Due care shall be exercised against the starting and spreading of wildfires during the projects duration. The contractor shall be held liable for all damages caused by such fires. All permits must be obtained prior to any burn activity on site.
- 7) Contractor should list all equipment to be used.
- 8) The Mitigant (James W Jensen Living Trust) and any contractor or subcontractor agrees to cut and remove said timber in accordance with the following conditions:
  - a. Any damage caused by the contractor or subcontractor to fences, roads, culverts, or any other improvements on site, shall be repair by the contractor.
  - b. Contractor shall cut stumps so as to cause the least possible waste and not higher than six inches above the ground.
  - c. All proposed skid trails must be approved by EEL staff.
  - d. The contractor will remove all trash weekly.
  - e. Contractor agrees to comply with all applicable government (municipality) regulations, rules and applicable laws in connection with this project.
- 9) In the case of removal of pines outside the designated project area, the County reserves the right to shut down the project and or MOA. In such a situation the Mitigation and/or contractor is responsible to mitigate the damages.

## Exhibit B



## Exhibit C



**Ashbury, Jenny**

---

**From:** O'HARA, CHRISTOPHER  
**Sent:** Friday, February 17, 2012 2:00 PM  
**To:** Ashbury, Jenny  
**Subject:** Fwd: MOA for Malabar Scrub Sanctuary Restoration

Begin forwarded message:

**From:** "Tonda L. Logue" <[TLogue@bda-inc.com](mailto:TLogue@bda-inc.com)>  
**Date:** February 10, 2012 4:04:16 PM EST  
**To:** "Chris O'Hara" <[chris.ohara@brevardparks.com](mailto:chris.ohara@brevardparks.com)>  
**Cc:** "W. Jeffrey Pardue" <[JPardue@bda-inc.com](mailto:JPardue@bda-inc.com)>, "Michael A Knight" <[Mike.Knight@brevardparks.com](mailto:Mike.Knight@brevardparks.com)>, "Jenny Ashbury" <[jenny.ashbury@brevardparks.com](mailto:jenny.ashbury@brevardparks.com)>  
**Subject:** RE: MOA for Malabar Scrub Sanctuary Restoration

Chris,  
I appreciate the confirmation email.

Tonda

*Tonda Logue*

Senior Scientist  
Breedlove, Dennis & Associates, Inc.  
330 W. Canton Ave.  
Winter Park, FL 32789  
407-677-1882

---

**From:** Chris O'Hara [<mailto:chris.ohara@brevardparks.com>]  
**Sent:** Friday, February 10, 2012 3:58 PM  
**To:** Tonda L. Logue  
**Cc:** W. Jeffrey Pardue; Michael A Knight; Jenny Ashbury  
**Subject:** Re: MOA for Malabar Scrub Sanctuary Restoration

Tonda,  
The e-mail below is accurate. The BO will guide the restoration scope of work and revised areas provide by Lisa Smith will represent the area of work.  
Thank you,  
Chris

On Feb 10, 2012, at 3:31 PM, Tonda L. Logue wrote:

Chris,  
As discussed today, it is Brevard County EELs understanding that the USFWS Biological Opinion (BO) as part of the ACOE Nationwide Permit (SAJ-2011-01756 NWP-LS) will drive the terms and conditions of the MOA for the restoration of the Malabar Scrub Sanctuary (Exhibit A of the MOA) and the MOA will be attached to the BO.

You also confirmed with me that the area as revised by Lisa Smith with ACOE to be restored on the Malabar Scrub Sanctuary will not have to go before the Board of County Commissioners for approval because the intent of the restoration did not change.

If you could respond to this email confirming that this understanding is accurate, it would be much appreciated.

Thank you for your time and assistance on this project,

Tonda

*Tonda Logue*

Senior Scientist  
Brzedlovz, Dennis & Associates, Inc.  
330 W. Canton Ave.  
Winter Park, FL 32789  
407-677-1882

Chris O'Hara, Land Manager  
South Mainland Region  
Brevard County Parks and Recreation Department  
Environmentally Endangered Lands Program  
91 East Drive  
Melbourne, Florida 32904  
(321) 255-4466  
[chris.ohara@brevardparks.com](mailto:chris.ohara@brevardparks.com)

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**Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.**

Chris O'Hara, Land Manager  
South Mainland Region  
Brevard County Parks and Recreation Department  
Environmentally Endangered Lands Program  
91 East Drive  
Melbourne, Florida 32904  
(321) 255-4466  
[chris.ohara@brevardparks.com](mailto:chris.ohara@brevardparks.com)



## **AMENDMENT TO MOA**

### **EXHIBIT B & C REVISED**

Subsequent to the initial identification of the area on the Malabar Scrub Sanctuary that would be the subject of the restoration and management efforts pursuant to this MOA (Exhibits B & C preceding), a revision to the location of the restoration area was recommended by the Department of the Army, Corps of Engineers (ACOE) as part of their review in the Section 7 consultation [see February 7, 2012 e-mail correspondence from Lisa Smith (ACOE) following]. Following review and discussion, this recommended revision was agreed to by Brevard County Environmentally Endangered Lands, James W. Jensen Living Trust, and the U.S. Fish and Wildlife Service (USFWS). Exhibit A referenced and attached to the ACOE e-mail replaces the earlier Exhibits B & C.

(NWP-LHS) - Viera Data Center - Proposed Section 7 Conservation Measures at Malabar Scrub Sanctuary  
From: Smith, Lisa H SAJ [Lisa.H.Smith@usace.army.mil]  
Sent: Tuesday, February 07, 2012 5:44 PM  
To: W. Jeffrey Pardue; Candace\_Martino@fws.gov  
Cc: Ana Saunders; Tonda L. Logue; heath\_rauschenberger@fws.gov;  
Sadowski, Irene SAJ; Mike Knight; Chris O'Hara; Todd\_Mecklenborg@fws.gov  
Subject: RE: SAJ-2011-01756 (NWP-LHS) - Viera Data Center - Proposed  
Section 7 Conservation Measures at Malabar Scrub Sanctuary  
(UNCLASSIFIED)

Attachments: EEL Program Revised Malabar Scrub Restoration Needs Map\_ 03  
Feb 2012.pdf

Classification: UNCLASSIFIED  
Caveats: NONE

Good afternoon all,

In an effort to continue to move the Viera Data Center Section 7 consultation process forward pursuant to my January 31, 2012 comments, I asked the EEL Program to identify an additional 12.5+/- acres of potential suitable scrub-jay habitat at the Malabar Scrub Sanctuary that is in need of restoration via timbering of the canopy and roller-chopping shrub layer. In response, the EEL Program provided the attached Exhibit A which identifies 12.5+/- acres east of the previously identified polygons. This information was forwarded to Candace Martino, USFWS, for review on February 3, 2012. I received the USFWS informal concurrence with this proposal today.

In order to maintain consistency with the original proposal provided by BDA, on behalf of the Applicant (James W. Jensen Living Trust), and in consideration of established burn units at Malabar Scrub, please note on Exhibit A that the areas to be timbered and roller-chopped AND the areas to be burned by the Applicant's contractors EACH REMAIN at 26-acres. The EEL Program has agreed that they will be responsible for burning the 12.5+/- acre restoration area proposed east of the original polygons. Therefore, under this revised plan AND as originally proposed by the Applicant, the Applicant would remain responsible for timbering, roller chopping, and burning at total of 26-acres.

It is my understanding that the MOA between the EEL Program and James W. Jensen Living Trust was to be approved today by the Brevard County Board of County Commissioners. In speaking with the EEL Program, it is also my understanding that the approved MOA may be modified subject to this proposed revision without having to return to the Commission for approval. Mike or Chris, please verify that this understanding is correct. Thank you.

I'll look forward to receiving comments to this proposal and to my related January 31, 2012 email.

Respectfully,

Lisa H. Smith, Project Manager  
U.S. Army Corps of Engineers  
Cocoa Regulatory Section  
400 High Point Drive, Suite 600  
Cocoa, FL 32926  
phone: (321) 504-3771 extension 17  
fax: (321) 504-3803  
Lisa.H.Smith@usace.army.mil




Please assist us in better serving you! Please complete the customer survey by clicking on the following link:  
<http://per2.nwp.usace.army.mil/survey.html>

Classification: UNCLASSIFIED  
Caveats: NONE

## Exhibit A



### Legend

-  Areas to be Burned (26+/-ac)
-  Areas to be Timbered and Chopped (26+/- ac)
-  Malabar Scrub Sanctuary Boundary

DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST

PERMIT NUMBER: SAJ-2011-01760 (NWP-LHS)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Branch, Post Office Box 4970, Jacksonville, Florida 32232-0019.

PROJECT LOCATION: (Street Address) 1501 Malabar Woods Blvd Unit Sanct

N/A

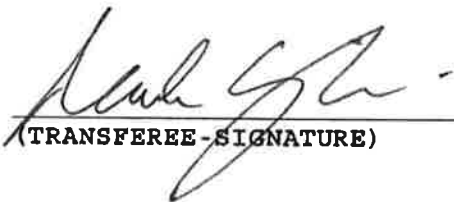
(SUBDIVISION)

N/A

(LOT)

500

(BLOCK)



(TRANSFeree-SIGNATURE)

Nov-19-2020

(DATE)

Mark Consigli, Gen. Cnsl. Satcom Direct, Inc

(NAME-PRINTED)

Satcom Direct, Inc. 1050 Satcom Lane

(MAILING ADDRESS)

Melbourne, FL 32940

(CITY, STATE, AND ZIP CODE)



# Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

## PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2846290  
 Owners Florida, State Of (Itf); Division Of State Lands  
 Mailing Address C/O FL Dept Of Environ Prot 3900 Commonwealth Blvd  
 - MS 115 Tallahassee FL 32399  
 Site Address 1501 Malabar Woods Blvd Unit Sanct Malabar FL 32950  
 Parcel ID 28-37-36-00-500  
 Property Use 8060 - State Owned Land - Vacant  
 Exemptions EXSF - State Owned  
 Taxing District 34Z0 - Malabar  
 Total Acres 93.67  
 Subdivision --  
 Site Code 0001 - No Other Code Appl.  
 Plat Book/Page 0000/0000  
 Land Description S 1/2 Of NE 1/4 Of SW 1/4 & SE 1/4 Of SW 1/4 Lying N  
 Of Malabar Rd & N 1/2 Of SE 1/4 Exc NE 1/4 Of NE 1/4  
 Of SE 1/4, Db 198 Pg 397, Orb 125 Pg 234, 1137 Pg  
 1038, 2493 Pg 2907, 2582 Pg 1027, 2607 Pgs 2015 &  
 2016

## VALUE SUMMARY

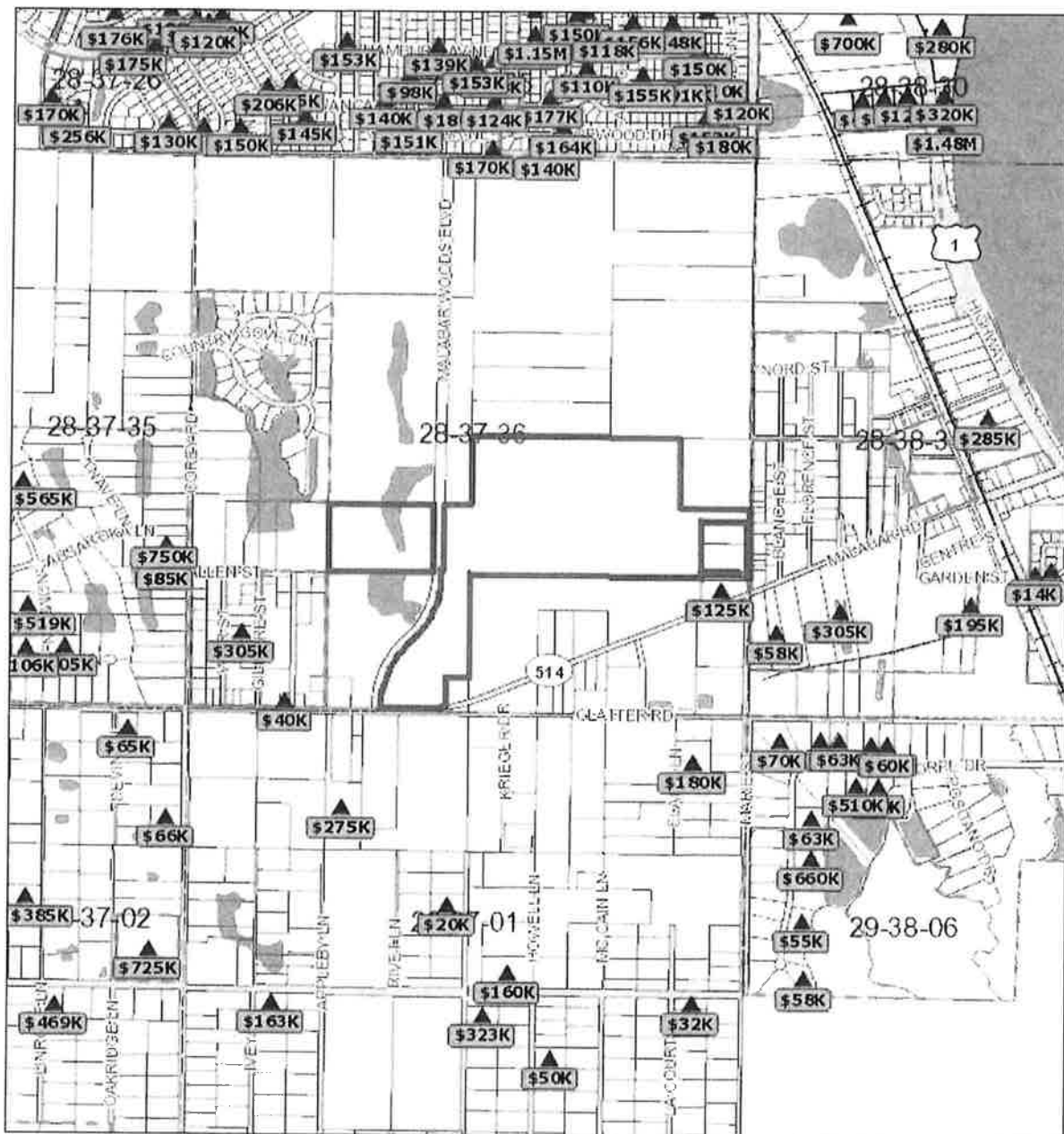
Category	2020	2019	2018
Market Value	\$504,550	\$504,550	\$504,550
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$504,550	\$488,630	\$444,210
Assessed Value School	\$504,550	\$504,550	\$504,550
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$504,550	\$488,630	\$444,210
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
05/22/2001	--	CD	Vacant	4376/3544
07/01/1993	\$1,364,400	PT	Vacant	3306/0722
07/01/1993	--	PT	Vacant	3307/1533
05/19/1987	\$3,446,200	PT	--	2803/0678
06/01/1984	\$352,000	NN	--	2522/1607
06/01/1984	\$307,800	NN	--	2522/1605

No Data Found

# Brevard County Property Appraiser



November 19, 2020

1:16,000  
 0 700 1,400 2,800 ft  
 0 225 450 900 m

2846330

For illustration only. Not a survey. Map layers may not precisely align.  
 © BCPAO 2015

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

1. Contractor: JENSEN TRUST TO SATCOM		2. Amount:
3. Fund/Account #: 1610/300116	4. Department Name: EEL PROGRAM	
5. Contract Description: ASSIGN/ASSUMP-JENSEN TO SATCOM MIT MOA		
6. Contract Monitor: JENNY WARNER	8. Contract Type:  TERM CONTRACT	
7. Dept/Office Director: MARY ELLEN DONNER		
9. Type of Procurement: Other		

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

### APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

### APPROVAL

COUNTY OFFICE	YES	NO	SIGNATURE
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warner, Jenny <small>Digitally signed by Warner, Jenny Date: 2020.07.02 12:52:39 -04'00'</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2020.07.06 12:58:43 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2020.07.02 12:54:52 -04'00'</small>

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>