



REGULAR TOWN COUNCIL MEETING

Monday, February 7, 2022 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA
 - a. **Approve Minutes of RTCM 1/03/2022, STCM of 1/24/2022, Wrkshp of 1/24/2022 & SCTM of 2/2/2022**
Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

- b. **Cancel RTCM of 02/21/2022**
Exhibit: Agenda Report Number 4b

Attachments:

- **Agenda Report Number 4b** (Agenda_Report_Number_4b.pdf)

- c. **Approve Standard Allowance for Coronavirus State & Local Fiscal Recovery Funds**
Exhibit: Agenda Report Number 4c

Attachments:

- **Agenda Report Number 4c** (Agenda_Report_Number_4c.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Manager
 - b. Special Projects Manager Lisa Morrell
 - c. Fire Chief
 - d. **Public Works Director - Written Report**
Exhibit: Agenda Report Number 8d

Attachments:

- **Agenda Report Number 8d** (Agenda_Report_Number_8d.pdf)

e. Clerk

9. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS / SPECIAL ORDERS : 2

a. Final Adoption of Comprehensive Plan Amendment 2021-02ESR within Ordinance 2021-16 to add a Property Rights Element to Malabar Comp Plan (Ordinance 2021-16)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02 BY ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS TO THE COMPREHENSIVE PLAN; RECEIVING NOTIFICATION OF COMPLIANCE FROM THE STATE; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

b. Final Adoption of Solid Waste Franchise for Codification

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REPEALING AND REPLACING ORDINANCE 2014-12 AND ALL OTHER SOLID WASTE AND RECYCLABLE MATERIAL FRANCHISE ORDINANCES AND AGREEMENTS IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES REPLACING SUCH REPEALED FRANCHISE ORDINANCE AND AGREEMENTS WITH ORDINANCE 2022-01 GRANTING AN EXCLUSIVE SOLID WASTE AND RECYCLING MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO of FLORIDA, INCORPORATED AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10b

Attachments:

- **Agenda Report Number 10b** (Agenda_Report_Number_10b.pdf)

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

a. Request for Special Exception to Construct eight-foot (8') fence on south property line by Malabar Resident Jennifer Doyle.

Exhibit: Agenda Report Number 11a

Attachments:

- **Agenda Report Number 11a** (Agenda_Report_Number_11a.pdf)

b. Agenda Request to Accept Walker Lane south of Atz Road by Linda Walker.

Exhibit: Agenda Report Number 11b

Attachments:

- **Agenda Report Number 11b** (Agenda_Report_Number_11b.pdf)

12. ACTION ITEMS

ORDINANCES: 0

RESOLUTIONS: 1

MISCELLANEOUS: 0

a. Resolution 02-2022 Opposing House Bill 531

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; OPPOSING HOUSE BILL 531 WHICH WOULD REQUIRE ALL LOCAL ELECTIONS TO DESIGNATE THE POLITICAL PARTY EACH CANDIDATE BELONGS TO IN THEIR SIGNAGE AND ON THE BALLOT; BILL WOULD ALSO RESTRICT VOTERS TO ONLY VOTE FOR ONE SCHOOL BOARD CANDIDATE THAT REPRESENTS THEIR DISTRICT AND NO LONGER ALLOW VOTERS TO VOTE FOR ALL DISTRICTSCANDIDATES FOR SCHOOL BOARD; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION TO THE BREVARD LEGESLATIVE DELEGATION, THE FLORIDA LEAGUE OF CITIES, THE PRESIDENT OF THE SENATE, SPEAKER OF THE HOUSE AND THE GOVENOR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

- **Agenda Report Number 12a** (Agenda_Report_Number_12a.pdf)

b. Requested Changes to the Environmentally Endangered Lands Program Malabar Scrub Sanctuary Restoration Plan.

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(2) Vacancies on the Trails and Greenways Committee

17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any

matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 02/03/2022 at 9:40 AM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.
Meeting Date: February 07, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Meeting Minutes

BACKGROUND/HISTORY:

Summary of Council actions at the Town Council Regular Meeting Minutes

ATTACHMENTS:

- Draft Minutes of RTCM Minutes of 1/03/2022
- Draft Minutes of Special Mtg on 1/24/2022 at 6:30pm
- Draft Minutes of ARP Workshop on 1/24/2022 at 7:30pm
- Draft Minutes of Special Mtg on 2/2/2022 at 7:30pm

ACTION OPTIONS:

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL
REGULAR MEETING MINUTES
JANUARY 03, 2022, 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:00 pm. CM Rivet led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

MATT STINNETT

LISA MORRELL

KARL BOHNE

DEBBY FRANKLIN

RICHARD W. KOHLER

TOWN MANAGER:

SPECIAL PROJECTS MANAGER

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

DEPUTY TOWN CLERK/TREASURER:

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: None

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 12/06/2021

4.b. Cancel RTCM 01/17/2022

4.c. Set American Rescue Plan Workshop for 01/24/2022 @ 7:00pm

MOTION: CM Vail / CM Acquaviva to approve. Vote All Ayes.

5. ATTORNEY REPORT: None

6. BCSO REPORT: None

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Committee Chair Thompson – the T&G would like to continue work on the ENT (Eagle Nest Trailhead) on Marie Street but this EEL proposed project has taken a priority and he requests to speak after the presentation by Mike Knight.

7.b. Park & Recreation Board: Chair Eric Bienvenu – agenda report summarizes the request for porta-potty.

7.c. P&Z Board: Chair Wayne Abare – not present

8. STAFF REPORTS:

8.a. Town Manager – Matt Stinnett is back. He gave an update on the next TAC being in February and they are working on the NPDES permit audit responses. RFP on Town signage is closing on Jan 14, 2022.

8.b. Special Projects Manager – Ms. Morrell, SPM, ARP WS was just approve for 1/24/22 to discuss how to spend the first tranche of 750K – the NEU (non-entitled units) have to wait to receive their money from the State instead of directly from the federal govt because they don't participate in the CDGB (Community Development Grant Block) – we got our money late but have until 2026 to expend the funds. The 750K is only payment 1 of 2. Malabar is getting a total of 1.5 million for the ARP funding so will get the second tranche in 2022 and have until 2026 to expend the funds.

She also reported that the Road workshop is also coming up in January/Feb to discuss the possibility of modifying the road improvement requirement, such as width requirements.

8.c. Fire Dept: Lt. Hooker stated a written report was submitted separately to Council and the public for December but he was present to give an summary overview. The annual ISO audit is going on now and is their top priority.

8.d. PW Director – Provided written report.

8.e. Clerk – Happy New Year. The FDEO notified us on 12/21/2021 that our Comp Plan Amendment to provide a Private Property Rights Element to the Malabar Comprehensive Plan was reviewed by the State and other State agencies without adverse comments and will be legally advertised for the final public hearing and adoption at the Feb 7, 2022 RTCM.

9. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)
Five (5) Minute Limit per Speaker. None

10. **PUBLIC HEARINGS: 0**

11. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING; PRESENTATIONS; RECOMMENDATIONS FROM BOARDS: 2**

11.a. **Presentation by Mike Knight Project Mgr of EEL Program re: Restoration Project at Malabar Scrub Sanctuary**

Exhibit:

Agenda Report 11.a.

Environmentally Endangered Lands (EELs) Program Manager Mike Knight went over the history on acquisition and management plans. Florida Forever program and managed under lease 4263. He then gave a history of the ballot language voted on in 1990 and 2004. Went to voters in 1989 and failed because there was no science backing plan. Language was in place prior to the purchase. Can't burn during summer. That is where the roller chopping comes in. Fire lines are exempt from silt fencing. Old growth forests are not located here. Older trees are left in place, and flat topped pine trees are always left in place. Could be larger trees that are younger. Scrub habitats don't have many treed areas. Concern that we are not considering other species is incorrect. The EELs program must manage it for the scrub habitat. Went over some of the concerns. There is a mixture of species in that area. Comes back to the proximity of the scrub.

CM Rivet asked about the methodology they are using to take down the trees.

CM Vail stated that he has used that area since the late 1970's and he does not see much difference in both Jordan and Malabar Scrub. When Eels bought it there was 10 families. Now there are 4 or 5.

Mr. Knight explained how they did a mosaic pattern when roller chopping at Jordan Scrub. They did not do 750 acres as stated.

Mr. Knight then explained what is pushing all of this. Population Viability Assessment (PVA) study done in 2020. That is why there is a push – there is enough (30 yrs.) data in Florida to do the study. 3 groupings of scrub jays. Nasa, central Brevard and south Brevard are covered in the report. The south area is the only area that is salvageable. Only hope they have to keep them from becoming locally extinct is by doing this work in these areas.

CM Scardino asked if he knows if they are threatened or endangered. Mr. Knight said he believes they are threatened. CM Scardino asked if he knew the difference between those categories. Mr. Evan Hall, 1373 Blanche St. came forward and explained the difference and stated they are both have federal protections.

Mr. Knight then went over the timbering aspect of the project. Trying to target the pines per acre but they leave extra to account for other threats like stress or beetle infestation.

CM Vail asked for clarification - that the pine growth has caused the scrub jay population to decline. Mr. Knight said yes. CM Vail asked if he has studied any aerial photography from 40 years ago. Mr. Knight said since the "natural fires" have subsided in the 1940's the pine trees have grown and become resistant to dying in a planned fire.

There is an eagle nest in the area, and they are held to the same regulations and won't do any work in the area. Also following the USFW rules for managing jay territories. Trying to confirm the 6th family and 2 additional potential territories on Malabar scrub west. Also potential for two families in Cameron Preserve.

Mr. Knight showed some of the existing trails and showed how the trees would be mowed down to 4 and 5 feet in height. Too many cabbage palms. CM Rivet said that it is most attractive part of the trail system. Mr. Knight reiterates that the only thing he is saying is primary concern is preserving the jays. Primary focus should be jays not public use. CM Rivet is saying that the public did not vote with that knowledge.

CM Vail said the dense shaded trail on left of screen, and asked Mr. Knight how much of the trails still have shade coverage. Mr. Knight responded very little, probably less than 1%. By taking that down how much does that small parcel benefit - the one scientist says the population will increase.

CM Rivet said the objective has to be the entire use - not just the jays. 160 acre site in Rockledge. Private property is adjacent to that site and providing 1000' buffer is not possible. Mr. Hann explained how these rules weren't followed at that location. CM Acquaviva said we are trying to keep the trees here in this rural community. It is a bit of an arrogant thing to say that we are just bikers who want shade. The trees are very important.

Mr. Knight said if you don't manage habitat with fire, it will become overgrown. Some of those trees are not "natural" in those area.

Mr. Knight went over some of the areas that would keep the trees. They have made effort to keep some of those areas. They have a management plan which was revised in 2006.

They have always routinely removed trees before controlled fires. CM Rivet said the fact that we issued a permit shows we are willing to work with you. Mr. Knight hopes we can address both concerns.

CM Scardino said they are having a difference of opinion

Mr. Knights states that the project won't go forward until the permitting issue is resolved. Went over some of the codes other municipalities.

CM Rivet said he is ignoring the objectives - what are the priorities. The jays are his priority. The county is saying that they don't care about our objectives.

CM Scardino states a balance needs to be struck.

CM Hofmeister would like to see more communication. Close the gap between the town city and state.

Mayor said he only talked about 1% of the land is oak hammock. We moved here just to have this rural lifestyle.

11.b. Recommendation from Parks & Recreation Board: Town provide an additional Porta-Potty at Malabar Community Park (MCP)

Exhibit: Agenda Report 11.b.

Park Board Chair Eric Bienvenu stated request.

MOTION: CM Vail / CM Scardino to approve. Vote: All Ayes.

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

12.a. Ordinance to codify Solid Waste Franchise Agreement (Ord 2022-01)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA REPEALING AND REPLACING ORDINANCE 2014-12 AND ALL OTHER SOLID WASTE AND RECYCLABLE MATERIAL FRANCHISE ORDINANCES AND AGREEMENTS IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES REPLACING SUCH REPEALED FRANCHISE ORDINANCES AND AGREEMENTS WITH ORDINANCE 2022-01 GRANTING AN EXCLUSIVE SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO OF FLORIDA, INCORPORATED AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report 12.a.

MOTION: CM Acquaviva / CM Hofmeister to approve 1st Reading of Ord 2022-01.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 5 to 0.

RESOLUTIONS: 1

12.b. Adopt Performance Measures per NFIP (Reso 01-2022)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE IMPLEMENTATION OF PERFORMANCE MEASURES FOR COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR FUTURE UPDATES AS NECESSARY TO COMPLY WITH THE OBJECTIVES OF THE NFIP AND CRS PROGRAMS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 12.b.

MOTION: CM Vail / CM Rivet to Adopt Reso 01-2022.

Discussion: Clerk said it is housekeeping to update the Code Book

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, Aye. Motion carried 5 to 0.

MISCELLANEOUS: 0

Chair dismissed Attorney.

13. DISCUSSION / POSSIBLE ACTION: 0

14. PUBLIC COMMENTS: General Items (Speaker Card Required)

Drew Thompson, as T&G Committee consensus -

People that are paying for it need to have input. Need balance. Category 1 for passive recreation. Find a better way of doing this. (Presentation attached)

Sue Hann 1365 Corey Rd – thanked Council for having this discussion.

There are a lot of other topics that should be part of the science-based discussion. She asked Malabar Town Council to request the meeting on Jan 18 at EELs be held here in Malabar. The FS includes passive recreation as part of “conservation” Confirmation Bias – lots of technical people here and experts we can search out. There is a lot of work we can do together. Why cut down the forest for a program that is set to sunset in 2024.

The Town should be an active partner at the table when these decisions are discussed and voted on. Need to make sure they are listening.

Financial plan should be requested. She then thanks Council for their time and consideration. (Presentation Attached)

Murray Hann – on T&G Committee. We want to discuss this at their next meeting. Develop compromise plan. Then bring it back to Town Council.

Alan Wollard – Country Cove Community HOA President – The land surrounding his community has changed dramatically since the EELs program has been managing the land. He represents 49 homeowners, 10 of whom have property adjacent to the Sanctuary. As the President of the HOA, potential buyers often call him before purchasing, and the Sanctuary is a huge selling point. He fears that it will be a detriment after the restoration process.

Mark Britt - 1617 Country Cove Circle – His property backs up to sanctuary. He was shocked when he heard about this project, and thanks Council for acting.

Jason Strouble, Vice-President of Brevard Mountain Bike Association – He wants to work with the Town to save the woods. The mountain bikers across the USA have built and expanded many trail systems. Mr. Knight referred to these lands are irreplaceable yet the proposed plan will take down all the trees. States he will save the majority of his comments for County Commission. Why was the Cruikshank sanctuary cleared and the trees removed if your PVA shows that those jays will be extinct soon?

Mike King, lives in Country Cove, - States his property borders sanctuary. He is happy that Council supports including more public outreach. EELs value science over compromise. Policy does allow for compromise. Thanks council for their position.

SPM Morrell asks direction from TC to staff. Special mtg before the WS on the 24th at 6:30 PM.

MOTION: CM Scradino / CM Hofmeister to amend code to regard conservation. This is INS in zoning. Vote All aye.

MOTION: CM Rivet / CM Vail to make special mtg at 6:30 on the 24th. Vote All Ayes

CM Vail asked if EEL Program allows mitigation projects within the Malabar Scrub for development. Mr. Knight said, yes, half of the Malabar Scrub and West to do development.

CM Acquaviva said compromise have been made in the past when Country Cove Circle was developed due to Scrub Jays.

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: Shared that she is proud of the Town's people for their expressing the importance in why we live here.

CM Vail: none

CM Rivet: Would like to see no "restoration" permits issued by the Town until we have some mutually agreed compromise.

CM Hofmeister: Thanked Murray and Sue Hann and Drew for their presentations. She runs within the Sanctuaries and hopes we can come to a compromise with the County and EEL Program – we have to do it together.

CM Scardino: Drove by Twin Lakes SD. It appears they have stopped watering the trees since their bond was returned. The trees appear to be dying.

Mayor Reilly: none

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 10:00 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin, C.M.C.
Town Clerk/Treasurer

Date Approved: 02/07/2022

DRAFT

**MALABAR TOWN COUNCIL
SPECIAL MEETING MINUTES
JANUARY 24, 2022, 6:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 6:30 pm. Mayor led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

MATT STINNETT

LISA MORRELL

KARL BOHNE, by phone

DEB FRANKLIN, arrived 6:37

RICHARD W. KOHLER

TOWN MANAGER:

SPECIAL PROJECTS MANAGER

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

DEPUTY TOWN CLERK/TREASURER:

3. ACTION ITEMS:

3.a. Discuss Possible Changes to Code dealing with Conservation Lands

Exhibit:

Agenda Report 3.a.

Chair asked TM Matt to open.

TM Matt Council had directed staff look at possible additional language to address conservation land and he went through options in Palm Beach County, Gainesville, and Sarasota County. He referenced the contract language regarding the timber sales settlement of 80% for Brevard County and 20% for FDACS. Typo in agenda report stated \$5.50 per ton is actually \$5.05 per ton. Focus of changes to code was for development, not conservation. We may want to make some changes to that and have included several potential motions.

ITM Morrell states the county has not applied for a new permit.

Chair called on speakers that had submitted cards:

Skyler Degarg, concerned about the project. He has contacted several professionals at FI Tech, and one EELs employee to learn more. A mixed use might be reasonable. Shade around the water ways would be excellent, as it is a different environment. Most of the land can be used for the intended purpose but can find a middle ground. Mayor states that is also his intent.

Sue Hann appreciates staff and Council for all of their hard work. Would like to see the Town and County work together. Recommends Staff or Council attend County Commission meeting; important to work together.

Murray Hann, he has proposed a trail centric compromise with the SMC, it wasn't shot down and is provided for agenda item 3b. Drew Thompson has mathematically shown that their compromise meets their 1-2 trees per acre. Probably arguing over 100 trees. Program estimates 10,000 trees in MSS (Malabar Scrub Sanctuary) removed. Were talking about 1% of the project, that can't be enough to affect the project. Were working towards reaching a consensus. They have signed contracts with a lumber contractor. The EELs program, not the contractor, pulled the permit. He encourages Council to send a representative to tomorrow's meeting.

Discussion: CM Acquaviva states that the Town has been working on strengthening the tree protection ordinance long before this issue came up. This is another opportunity to work on it. The

EELs program makes up 20% of our land, so we should send it to Planning & Zoning Board and the Attorney.

CM Scardino is concerned with timing. If we wait by sending it to P&Z, they may just cut the trees. We need to make some choices to head this thing off. CM Vail asks TM Stinnett what the time frame is on this? TM Stinnett states 2-3 months minimum if it goes to P&Z.

CM Scardino asked how much money they will make from the logging sale? ITM Morrell states we don't know how many trees they will be removing. Without a tree survey, we won't know.

CM Hofmeister asked is there have been any permits applied for? TM stated no. CM Hofmeister stated she attended the last G-V meeting and Mr. Mike Knight stated they are done in G-V and Micco areas.

ITM Morrell states that the density in tree removal is very different between = n areas.

TM Stinnett stated the County could have applied for a permit or come to Council and requested a special exception. They have done neither. We are looking at ways to make this process smoother. The ball is in their court.

CM Rivet stated this comes down to them not wanting to pay, and us not wanting to lose oak trees. There is room to compromise. We can be proud of ourselves for saving the 1% discussed by Mr. Murray.

CM Vail states Mr. Knight told him that only 1 % of the trees were oaks. He can not see how 1% of the trees will save the scrub jays. We are trying to do what's right for Malabar, passive recreation, and conservation, and we pay for it on our tax roll. To this point, no proposals have been well received. We want to work with the County.

Mayor states the goal for tonight's action is proposed amendments to update the Code regarding conservation land.

CM Vail stated we have been improving the conservation efforts in our Town, and this is the next step. We should send this item to P&Z Bd and ask them to expedite the review. If they can do it in their next meeting, he would be in favor of this.

Mayor stated that you can't put this specific incident into Code. TM Stinnett reminded Council there is a permit process on the books they can apply for. CM Scardino states he wants them to follow our rules. Scrub Jay birds live all around the State.

CM Rivet stated that he lives here because he wants to be among nature, and is in favor of preserving Scrub Jay habitat, but that can't be the only thing they focus on.

CM Acquaviva stated the land has been maintained by EELs for 30 years, and they haven't saved the Scrub Jays. Our neighbors do a lot to care for the area. We want a compromise.

CM Scardino doesn't believe they will proceed without a permit. They did the Jordan project without telling us and without a permit. CM Vail believes that a meeting that directly effects the Town should have notice sent to the Town.

CM Scardino stated he would really like to see how much money they are going to make from the logging process. CM Hofmeister stated that from March 1st to June 30th they cannot work due to nesting/breeding season. Can the EEL program do all that before March?

TM Stinnett proposed a Council motion for TM Stinnett and the T&GC to negotiate the application of the compromise and a permit, and for PZ to alter the Code to keep this from happening.

Atty states the Council should focus on the agenda item provided by amending the code. He doesn't believe it can be done in 2-3 months, especially with it being a Comp Plan change. If Staff is to move quickly, we need to know now. Mr. Knight has admitted that his lack of communication is why were here today. He supports moving ahead with the suggested motions from the agenda.

CM Rivet stated we can waive some or all of the fees if they give us a favorable agreement to save the oaks. CM Scardino stated we should try this first. Let TM Stinnett negotiate, and if it doesn't work, the apply our code to its extent allowed. Then we should amend the Code. CM Acquaviva states we should get P&Z Bd working on this now so in the future it is in Code. Mayor stated tomorrow evening is the County Commission Meeting. We should move forward with amending our ordinance.

Clerk Franklin was recognized by Chair and stated the County Commission Meeting is at 9 AM. She reiterated TM's suggestion that Council direct TM Stinnett to attend with T&G rep and present the compromise plan tomorrow and/or ask County Commission to meet and negotiate a compromise. Secondly, make a separate motion encompassing "Option 2" in the Agenda Report, to direct staff to send draft ordinance and other municipal code examples to the P&Z Bd to consider and submit recommendation to Council on potential Comp Plan and Code amendments to address conservation land. It will likely take closer to a year, as it has to be done as a text amendment to the Comp Plan which requires review and comments from five State agencies and final review by the State DEO. As the property is owned by the State the State would have to be contacted for their input and position on the amendments first. That is part of the newly adopted "Property Rights Element" all municipalities in the State had to adopt to ensure property rights of persons possibly affected by proposed changes to land use conditions within a jurisdiction are considered. Apparently, the same law doesn't apply to the County.

Atty states he agrees having someone go to tomorrow's meeting to request a meeting to compromise. Concurred with what Clerk stated.

MOTION: CM Rivet / CM Vail to direct TM Stinnett and the T&GC Chair Thompson and Vice-Chair Hann attend the Brevard County Commission meeting at 9:00AM tomorrow and request an opportunity to meet with County leaders and discuss/negotiate a compromise on the work proposed on the restoration and the permit fees currently in the system for a tree removal application. VOTE: All Ayes. Motion approved 5 to 0.

Chair recognized Mark Britt. He stated he was in the Malabar Scrub Sanctuary today and talked to people there with a large drone and they said they were doing aerial photography of the trees for the upcoming work in the Sanctuary by the EELs.

Mayor then recognized Deputy Clerk Kohler. He stated he also spoke with those folks and was told they were just testing the drone for upcoming water quality projects in the area.

MOTION: CM Acquaviva / CM Hofmeister to approve Option 2: Send Action to Staff to draft ordinance to amend the Malabar Comprehensive Plan to include a Land Use Designation of "Conservation" and amend the Land Development Code, Article XV to include a permit type, submission requirements and criteria for approval for land management for clearing and tree removal for preservation and conservation activities for a valid and current land management plan for governing agencies and with a corresponding fee resolution adding costs. This option would include legal advertisements to the property owner, legal ads in the paper, Public Hearings before P&Z, Council and ultimately review by the State Dept of Economic Opportunity and their findings of compliance.

Discussion: CM Rivet thought we should wait to see if the County applies for a permit under current code. CM Acquaviva believed we should act now with this motion as time is of the

essence. CM Vail stated we should move forward to prevent issues, and we have a permit they can apply for. What other community can say that 20% of their area is conservation?
VOTE: All Ayes. Motion approved 5 to 0.

3.b. Discuss Trails and Greenways Committee Recommendations

Exhibit: Agenda Report 3.b.

Mayor asked Drew Thompson to open. Went through the Power Point presentation presented at an earlier meeting providing timeline and history of the referendum to voters. The EELs have seemed to have drifted from its original mission. Referenced the referendum ballot questions in the 1990's and 2004. People that lived here and moved here for the woods and have enjoyed decades of natural resources. The conservation land purchased and managed due to the referendum have become an urban forest. Is it really appropriate at this stage of the program, it sunsets in 2024 unless the referendum is approved to continue funding. This area is unique in Brevard for promoting passive recreation. If not approved to continue in 2024, the funding goes away. T&G Committee of Malabar and all the many thousands of users and interested parties want to come up with an alternative. What we have to represent to public – not what they voted for. 60K in 2004/ look at how it is done, and the voters were not the ones changing the rules. Is it all about scrub jays? SMC (selection and management committee) – they don't rule the world. There is more to conservation than just scrub jays. Cut grind and burn. Takes 4.5 year for an acorn to come back out after being burned. Concept to go to optimal habitat. Treeless zone before the scrub jays to give them comfort zone. It is split in half with Briar Creek 100' ROW owned by the Town and exempt from this project. We think we are ready to present to EEL with the formula they are using. The 100' ROW belongs to Town. It is a not a 4-month project. You can't work in scrub jay area in April. April is not open to grinding the trees. He went over excel numbers. This is how he came up with 1000 trees. Predator birds are still needed. Where it is most significant. Critical area of passive recreation. Brevard County Board of County Commission needs to listen to the voters, user groups and the affected residents and property owners. Drew thinks they have a very clean plan. Corners are critical. They did deduct. And 1000 would be left.

Drew asked if they wanted to see the revised PP that Murray had done. It has been posted and distributed.

CM Acquaviva asked if when there are prescribed burns are the residents and Town notified with sufficient notice so they can avoid the smoke issue – when they burn are we getting proper notification – need notification before the smoke becomes an issue. CM Vail stated – all the concerned persons here tonight should attend the County Commission meeting tomorrow. Mayor thanked all the residents for coming and asked them to also attend the County Commission meeting in the morning.

4. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 7:30 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin, C.M.C.
Town Clerk/Treasurer

Date Approved: 02/07/2022

**MALABAR TOWN COUNCIL
ARP WORKSHOP MEETING MINUTES
JANUARY 24, 2022, 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road and was called to order after a 10 break after the Special Council Meeting.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:40 pm.

2. ROLL CALL: All members remained present. Attorney was dismissed.

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

MATT STINNETT

LISA MORRELL

KARL BOHNE, excused

DEBBY FRANKLIN

RICHARD W. KOHLER

TOWN MANAGER:

SPECIAL PROJECTS MANAGER

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

DEPUTY TOWN CLERK/TREASURER:

3. WORKSHOP ACTION ITEMS:

3.a. Discuss Potential Projects for American Rescue Plan Funding

Exhibit:

Agenda Report 3.b.

Mayor asked SPM Lisa to open. She went through the Power Point she created to discuss the requirements, criteria, deduction option and some suggestions on worthy projects.

SLFRF new acronym for State & Local Fiscal Recovery Funds. New term after the issuance of the final rule on how funds can be expended. She went over final rule update.

They can start using the rule now. Need to obligate before 2024 and spend before 2026.

Tier 6 recipient. April 30 is the first report due date for the NEU (non-entitlement units) that Malabar is classified. Interest on the funds stays with the funds account. We are tracking these funds and interest in a separate account. Mayor did ask about the payment timeline. First payment (tranche) was received from the State on 10/1/2021. The second tranche of equal amount will be received around 10/1/2022. Two annual payments equaling the total allotment of 1,595,220.00 million to make historic impact on the Town.

The final rule gives broader allowances and simplifies the spending process. Each recipient must declare if they intend to take the "Standard deduction" or not. We will ask Council to approve the "Standard deduction" as an agenda item on 2/7/2022. By doing so it will allow the Town to expend up to ten million on general government services for example parks, roads, meeting capacity improvements, protective and fire services, etc. For Capital items individually costing over 1 mil you must fill out an eligibility report. Replacing lost revenue, economic impacts to businesses, buying PPE, providing premium pay for 1st responders, expanding water service – all are possible examples for expenditures. CM Rivet is also asking about road paving. Yes, it can be used if Council selects the standard deduction. Can't use it to replace revenue lost because the State law changes on how to property tax is collected for example.

Overview of eligible uses.

List of needs – would like to see in operations. Document imaging. This is 60K will pay to outsource the document imaging of all the records. Originally thought we could buy equipment and do it ourselves, but this will get it done at a faster pace and save rental on storage and reduce time and cost to find copy and provide copies. It will also eliminate the touching and

handling of documents, improving the touchless goal. There will be recurring annual costs, but the offset is the savings in employee time and rental in addition to the health benefit.

Digital signage on Malabar Road. It is warranted. Allows remote messaging. Timely update of Town meeting notices, emergency messaging, alerts to residents.

Dave asked about Eschenberg park – community garden

Public restrooms. Well used. 50K to update more touchless. Touch point plus you don't need paper projects.

Forms converted to be done and signed online. There are reoccurring costs. You will see these though 5K a year. Cheaper than a staff person.

Cyber security training - all staff will have to have it and at onboarding and various test points. Should be addressed and will talk privately with Council on security issues.

Virtually hold meetings. Streaming it live. Some cities are more progressive. CM Rivet wants more people to be involved.

Public safety improvements. Fire Chief requested having pre plans done. Staff thinks we should look at other similar issues. Save some on side for PPE in case we need additional types of gear going forward.

Stormwater and street signs status for tracking how long they have been up and how long the reflectivity is active. Like fixed assets tracking so you know when signage must be changed out or upgraded. Those kinds of touchless improvements would be eligible. You can use GPS locating tools to show location of culverts, catch basins, etc.

Some recreation improvements at Malabar Community Park to encourage outside recreation - resurface tennis courts, playground fall zone upgrades. Multi-purpose upgrades such as tennis and pickleball. Lighting and irrigation can always be improved at the MCP.

Need to use funds to achieve the "WOW" factor. These eligible expenses will also provide jobs and training.

CM Scardino asked about GPS – Lisa explained this is a surveying tool not tracking like they have installed on vehicles.

TM Matt said you pay for service and upgrade service for more accurate. Pay by hour and it is 10/hr.

CM Acquaviva asked about 558K – can we use it for new storm windows. Yes, you could use it storm hardening.

Mayor asked for Council consent regarding the slide on the screen displaying the suggested allocation and expenditures. Everyone likes it all except CM Rivet is wary about the 200K for the park. SPM Lisa explained when they bought the new playground, they priced the rubber fall zone and that flooring alone was 90K – oh - consensus is to support. Mayor said Council can delete, modify, or add to this list throughout the year, but this will give SPM something to get started on. All of Council in support.

Next slide – what is your "WOW" factor. Staff would like Council input. This is a monumental opportunity to spend \$1,036,913 in federal funding to positively impact the Town of Malabar.

Examples of top current issues: Roads – NEUs are now allowed under the final rule to use funds on roads. CM Vail said that they have all agreed that if we don't fix/resurface Corey and Weber we will be rebuilding them – we need to do a paving analysis for those roads.

Stormwater – Consensus by Council that they would get no push back if we spent it all on this – but the cost to make an impact will be so much more. Two of the six projects presented in the Stormwater Masterplan presentation in September 2021 cost over one million and the other four were just under. There are stormwater grant funds available to accomplish this over a period of years. We are in the right spot with the Masterplan.

City water to Malabar Community Park and Fire Dept to improve sanitation and provide touchless upgrades.

Facility Improvements – some minor discussion on this. New Town Hall facility has been discussed previously as well as a community center.

Mayor sponsored the last Mayor's lunch, and many Mayors expressed their cities had hired lawyers to monitor how ARP money is expended. Malabar will also do our due diligence by utilizing the Special Projects Manager to oversee.

SPM Lisa reiterated that Council would need to vote to take the standard deduction instead of calculating the actual revenue loss. It will be on the Consent Agenda for Feb 7, 2022, mtg.

Mayor stated Council is to think about and bring back ideas for potential expenditures.

4. PUBLIC COMMENTS: General Items (Speaker Card Required)

5. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:30 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin, C.M.C.
Town Clerk/Treasurer

Date Approved: 02/07/2022

**MALABAR TOWN COUNCIL
SPECIAL MEETING MINUTES
February 2, 2022, 7:30 PM**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:30 pm. Mayor led P&P.

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER

TOWN MANAGER:

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE

DEPUTY TOWN CLERK/TREASURER:

RICHARD W. KOHLER

3. SPECIAL MEETING ITEMS:

**3.a. Special Meeting called by Council Member Scardino to Discuss the Brevard
County Tree Removal Project at Malabar Scrub Sanctuary (E & W)**

Exhibit: Agenda Report 3.a.

Allowed the speakers first.

Murray Hann, 1365 Corey Rd wanted to let Council know that he and TGC Chair Thompson attended the 1/21 SMC Meeting. The committee gave them feedback which they incorporated into a new compromise plan. The goal was to conserve important trees and achieve the tree ratio set by the EELs program. They were able to produce a plan that allows 1.4 trees per acre. They also discovered that in Malabar West, none of the property meets the stated 1000-foot buffer. The Deputy Clerk has a copy for Council's review.

Drew Thompson, 940 Holloway Ln thanked Council for the opportunity to speak. We feel we have a comprehensive plan for you to review. The PowerPoint is geared to be an apolitical outline of the past few months, and provide an objective simple portrayal of what the Town wants. Essentially it would leave screening trees around the neighborhoods, increase the user experience, and increase the overall footprint of scrub habitat. The thousand-foot metric is just not achievable in Malabar West. FWC chart states 300 ft is the minimum, and that number has worked in Cruikshank's and Kennedy SC. He believes our package is ready to move forward.

Jennifer Hubbard, 1970 Linrose Lane. Built in Malabar in 2020 because of the beautiful parks and sanctuaries. On January 25th, the County blocked access to the sanctuary. It was done in retaliation towards the Town. She has pulled hundreds of permits in her life and believes that the Town followed procedures for the expired permit correctly. The County stated that they would charge the Town \$6,000 for the fences. Can Council speak to if the County has sent an invoice?

CM Scardino stated he is concerned that the County is disregarding the Town's permit process. Once the trees are gone, we can't get them back. He has searched for Scrub Jays in the sanctuary and hasn't found any. He feels there has been no input from the citizens in this process. He would like the County to consider us. He would like to enforce the permit as it stands. He is concerned that the County is going to circumnavigate the Town.

Mayor Reilly states he has requested proof that there are indeed scrub jays in the sanctuary.

TM Stinnett stated that Mike Knight has provided a spread sheet from an asset group that is tracking the birds. The information is available to Council upon request.

CM Rivet states he has seen Scrub Jays in the area. He is fully in favor of saving habitat but believes there should be compromise.

CM Scardino states he heard that the County may be looking to compromise.

CM Vail states that the TGC has done an excellent job, and so has staff. He believes that we should let this play out.

CM Scardino states the fence really concerned him.

CM Acquaviva state that the sign says Closed. It really upset a lot of people.

CM Hofmeister states that a fence was installed over halfway down a one-way trail and is a safety hazard.

CM Rivet states the fence isn't for construction, its to punish the people of Malabar.

TM Stinnett states that Council action has been geared towards a compromise, and that message is starting to get through. He appreciates Council's faith in him to continue to navigate this.

CM Scardino is encouraged that they want to compromise.

Atty Bohne states that time limitations effected the message provided at the County Commission Meeting. He reached out to the County Atty. They spoke today and confirmed that they County is looking at the TGC Compromise document to see if it can work. Their staff was directed to research legal actions, so it is on its agenda. Because we brought this to them and gave them our opinion, they are reviewing it. The Town wants open dialog with the County. He also expressed to the County Atty that the Town will not pay for any of the fence. The State has to be involved here as they are the landowner.

CM Acquaviva stated that talking with TM Stinnett has given her hope. She was disappointed after the last County Commission Meeting and thanked him for keeping a calm head and pushing forward.

CM Scardino is encouraged that this is moving in a good direction.

CM Hofmeister thanked Sue and Murray Hann and especially Drew Thompson for their hard work.

Sue Hann 1365 Corey Rd is concerned about the resolution on the County's agenda for Tuesday. Is there a role for the Town or its citizens at Tuesday's County Commission Meeting? She would be very concerned if they County circumnavigates the dispute resolution process. It would be a good show of faith for the County to remove the fences. She really appreciates the Town for their hard work. She wants to be helpful and supports collaboration.

Atty Bohne states that the resolution would bypass the mediation process. He doesn't know how they will vote, but staff included it because that was what they have been instructed to do. However, they will have to listen to public comments.

Drew Thompson wanted to reiterate Mrs. Hann's concern. He doesn't trust that the County will not act on that resolution. If they act, we will be behind the ball, and he is concerned that the Town will be burned. It is in the Town's interest to not assume that the County will work with us.

Atty Bohne states that if they pass the resolution, it doesn't mean they will start a suit the next day. We could ask the Court to abate the proceeding and mandate the mediation

4. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 7:56 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 02/07/2022

DRAFT

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, FEBRUARY 21, 2022, 7:30 PM**

2725 MALABAR ROAD, MALABAR, FLORIDA

AGENDA

- 1. CALL TO ORDER, PRAYER AND PLEDGE**
- 2. ROLL CALL**
- 3. ACTION:**
- 4. ADJOURNMENT:**

CANCELLED

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not Provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: **4.c.**
Meeting Date: February 7, 2022

Prepared By: Lisa Morrell, Special Projects Manager

SUBJECT: Replacing Lost Public Sector Revenue – Standard Allowance

BACKGROUND/HISTORY:

On January 24th, a public workshop was held with Town Council to discuss the Coronavirus State & Local Fiscal Recovery Funds: Final Rule by the United States Department of the Treasury's Final Rule and the potential eligible uses and allocations. By Town Council.

A summary of the election the Standard Allowance for Replacing Lost Public Sector Revenue:

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for "government services" in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency. Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services. DETERMINING REVENUE LOSS Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

1. Recipients may elect a "standard allowance" of \$10 million to spend on government services through the period of performance. Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund "government services." The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF's smallest recipients. All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient's total allocation.

2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule. Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule. To calculate revenue loss at each of these dates, recipients must follow a four-step process.

FINANCIAL IMPACT:

None, the first tranche of SLFRF fund allocation has been recognized in the current FY21/22 Budget, \$797,610. A second tranche, \$797,610, will be received twelve months after the first tranche receive, approximately October 1, 2022. Total SLFRF Allocation of \$1,595,220.

Reporting and Compliance is due April 30, 2022, for Non-Entitlement Units (NEU's) and annually through the end of expenditure period, December 31, 2026.

ATTACHMENTS:

SLFRF-Compliance-Statement.PDF

ACTION OPTIONS:

Motion to elect the Standard Allowance option for Replacing Lost Public Sector Revenue under the Final Rule as provided by the U.S. Department of Treasury.

Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule

U.S. Department of the Treasury

On January 6, 2022, the U.S. Department of the Treasury (Treasury) adopted a final rule implementing the Coronavirus State and Local Fiscal Recovery Funds (SLFRF). The final rule responds to comments received on the interim final rule and will take effect on April 1, 2022. Until that time, the interim final rule remains in effect. This statement clarifies the transition from compliance with the interim final rule to compliance with the final rule. Recipients should also review the final rule for additional information.

State, territorial, local, and Tribal governments (together, recipients) must comply with the final rule beginning on April 1, 2022, when the final rule takes effect. Prior to April 1, 2022, recipients may take actions and use funds in a manner consistent with the final rule, and Treasury will not take action to enforce the interim final rule if a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used.¹

This includes, but is not limited to, the following uses of SLFRF funds:

- Responses to the Negative Economic Impacts of the Public Health Emergency. The final rule expands the enumerated list of eligible uses of SLFRF funds in this category, including health insurance subsidies and paid sick and family leave, as well as making affordable housing development, childcare, early learning services, and services to address learning loss available to any impacted household.
- Responses to the Disproportionate Public Health and Economic Impacts of the Pandemic in Certain Communities. The final rule expands the list of enumerated eligible uses of SLFRF funds for disproportionately impacted communities, including for investments in neighborhoods that promote improved health and safety outcomes, services to address vacant or abandoned properties, and expanded assistance to small businesses.
- Capital Expenditures to Respond to the Public Health and Negative Economic Impacts of the Pandemic. The final rule clarifies that capital expenditures can be eligible in this category, when meeting certain standards, and provides an enumerated list of eligible capital expenditures.
- Responses to Restore and Bolster Government Employment. The final rule expands the uses of funds available to restore and bolster government employment, including restoring employment by hiring up to 7.5% above a recipient's pre-pandemic baseline employment level, funding for employees that experienced pay reductions or were furloughed, maintaining current compensation levels to prevent layoffs, and worker retention incentives.

¹ This means that Treasury will not take action to enforce uses of the interim final rule to the extent that the recipient wishes to change its planned uses of SLFRF funds in a manner consistent with the final rule.

- Government Services to the Extent of Revenue Loss. The interim final rule and final rule both permit recipients to use SLFRF funds for government services in an amount equal to revenue lost due to the pandemic. As discussed in the final rule, Treasury is permitting recipients to determine the amount of revenue lost due to the pandemic either according to a formula or by claiming a standard allowance of up to \$10 million, not to exceed their total award allocation. A recipient that plans to use the standard allowance will make a one-time election and report it to Treasury through regular programmatic reporting. In advance of making this election, a recipient may begin to use up to \$10 million of SLFRF funds for government services.

Furthermore, the final rule adjusts the revenue loss calculation formula to (i) permit recipients to calculate revenue loss on a calendar year or fiscal year basis so long as the recipient employs a consistent methodology throughout the period of performance and (ii) include revenue from certain utilities. Treasury will update reporting guidance to clarify how recipients electing to use a fiscal year basis will adjust prior calculations, and a recipient may adjust its prior calculations to reflect these changes prior to April 1, 2022.

- Investments in Broadband Infrastructure. The final rule expands eligible areas for investment in broadband infrastructure to include locations where the recipient has identified need for additional broadband investment. Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards.
- Investments in Water and Sewer Infrastructure. The final rule expands the list of eligible water and sewer infrastructure projects to include a broader set of project types, including certain dam and reservoir rehabilitation projects, additional stormwater projects, private well projects, and a broader range of projects that remediate lead in water.

Prior to April 1, 2022, the interim final rule remains in effect. Accordingly, recipients may obligate and expend funds in a manner consistent with the interim final rule prior to April 1, 2022.

In addition, Treasury recognizes that recipients have taken steps to use SLFRF funds for projects in a manner consistent with the interim final rule. To the extent that a recipient has taken significant steps toward obligating SLFRF funds in a manner consistent with the interim final rule prior to January 6, 2022, Treasury will generally not take action to enforce provisions contained in the final rule, to the extent that they are more restrictive than those in the interim final rule. Such significant steps include initiation of procurement or grantmaking actions, detailed planning of projects or programs, appropriation of funds, and other significant planning steps. Consistent with this approach, Treasury is providing specific guidance with respect to compliance with the following aspects of the final rule:

- State Unemployment Insurance Trust Funds. Under the interim final rule, a recipient may use SLFRF funds to make deposits into its state account of the Unemployment Insurance Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. Under the final rule, a recipient that uses SLFRF funds to make a deposit into its Unemployment Insurance Trust Fund may not take action to reduce average weekly benefit amounts or reduce the number of weeks of benefits payable (i.e., the maximum benefit entitlements).² If a recipient (i) has taken significant steps toward making a deposit into its Unemployment Trust Fund prior to January 6, 2022 or (ii) has made a deposit into its Unemployment Trust Fund prior to April 1, 2022, the recipient will not be subject to limitations on reduction of benefits included in the final rule.³
- Definition of Low-Income and Moderate-Income Households. Under the interim final rule, a “low- and moderate-income” standard was used to determine presumptive eligibility for certain services. In response to comments requesting additional clarification as to what constitutes low income and moderate income, the final rule includes a definition of low-income household and a definition of moderate-income household.
 - For any program, service, or project available to low- and moderate-income households, the recipient may continue to use eligibility criteria for low-income and moderate-income households that they developed consistent with the interim final rule if the recipient (i) has taken significant steps toward obligating SLFRF funds for that program, service, or project prior to January 6, 2022 or (ii) has obligated funds for that program, service, or project prior to April 1, 2022. Recipients that have not taken significant steps toward obligating SLFRF funds prior to January 6, 2022 should either change eligibility criteria to reflect the definition of low-income households and/or moderate-income households included in the final rule or be able to determine that the class of households they seek to serve experienced a negative economic impact resulting from the pandemic.
 - Treasury will consider a reasonable definition of low- and moderate-income developed by the recipient to be consistent with the interim final rule; this includes reasonable definitions that are higher than the definition contained in the final rule. As with all provisions under the interim final rule, recipients should be able to support their determination of how to define low- and moderate-income under the interim final rule.

² See final rule section 35.6(b)(3)(ii)(A)(10).

³ See final rule for additional information.

- Capital Expenditures. The final rule includes a framework for determining whether a capital expenditure would be eligible as a response to the public health emergency or its negative economic impacts, which includes a requirement to prepare a written justification for projects with actual or expected capital expenditures of \$1 million or more. A recipient is not required to prepare or submit a written justification as required under the final rule if the recipient (i) has taken significant steps toward obligating SLFRF funds for that project prior to January 6, 2022 or (ii) has obligated funds for such project prior to April 1, 2022.
- Broadband Infrastructure. The final rule includes a requirement that recipients must require service providers for a broadband project that provides service to households either to participate in the Federal Communications Commission’s Affordable Connectivity Program (ACP) or provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP. If a recipient (i) has taken significant steps toward obligating SLFRF funds for a broadband infrastructure project prior to January 6, 2022 or (ii) has obligated funds for a broadband infrastructure project prior to April 1, 2022, the recipient will not be subject to this requirement.
- Government Services to the Extent of Revenue Loss. In addition to the changes discussed above, the final rule requires recipients to exclude the effects of tax changes adopted after January 6, 2022 from the calculation of revenue lost due to the COVID-19 public health emergency, if using the full revenue loss formula rather than the standard allowance. These changes affect the calculation of revenue loss for calculation dates after the April 1, 2022 effective date, regardless of when SLFRF funds are obligated for government services.

The final rule includes additional information regarding these and other transitions. Please contact SLFRP@treasury.gov with additional questions.

TOWN OF MALABAR

Town Council

AGENDA ITEM NO: 8.d
Meeting Date: February 7th, 2022

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Public Works Director Report

BACKGROUND/HISTORY:

- a) At the first meeting of the month, the Public Works Director submits a written report for Council's review

FINANCIAL IMPACT:

- a. None

ATTACHMENTS:

- a. January 2022 Public Works Director Report

ACTION OPTIONS:

- a. None

January 2022 Public Works Report

Equipment Update

- Serviced Ford F-250
- Serviced Dodge Dakota
- Repaired hose on Mini Excavator
- Repair Hydraulic leak on Slope Mower

See attached pages for all Mowing, Road Grading and Slope Mowing accomplishments for the month.

Streets & Roads Jobs

- Repaired Washouts at:
 - Hall and Corey Rd
 - Elaine Ln
 - Waring Ln
 - Rocky Point Road
- Fill potholes on all paved roads.
- Repair/Replace Street Signs:
 - Alexander Ln
 - 8 "30 MPH" signs
 - 7 "35 MPH" signs
 - No Outlet Sign

General Duties

- Cut back trees on Township Rd
- Clean up Dump Site at Rocky Point Rd
- Clean Hunter Ln (Road and Ditch)
- Repair gate at North Corey Rd
- Remove Christmas Tree from Park, and decorations from Town Hall
- Clean up Dump Yard

Mowing & Weed Eating Checklist January 2022

Sanitation	1-3	1-10	1-18	1-24/1-31
Soccer Field	1-7		1-21	
Baseball Field	1-7		1-21	
Drag Infield	1/7		1-21	
Town Property				
Malabar Park			1/18	
Fire Department		1-11		
Disc Park				
Trail Park		1-13		
Eschenberg Park		1-10		
Huggins Park				
Public Works Yard				
Marie St. Yard				
Town Hall/ S. RR Ave				
Town ROWs				
Rocky Point Rd North & South	1-3			
Briar Creek Blvd & Bridge				
Corey Rd North End		1-11		
Marie St South East Side				
Marie St North West To Johnsnton		1-13		
Glatter Rd @ Malabar Rd				
Glatter Rd East to RR		1-14		
Data Managment	1/3			
Marie St Trail North and South Side		1-13		
Quaterman & Atz Rd		1/14		
Booth & Lette Intersection North				1-24
Richard Rd Tillman Canal			1-21	
Bus Stops				
Atz & Corey				1-24
Weber & Old Mission			1-21	1-24
Lacourt & Hall				1-24
LaCourt & Atz				1-24
Hall & Corey				1-24
Main Intersections (All Paved Roads w/ Stop sign, 50 Ft Each Direction)				
Corey & Hall				1-24
Corey & Atz				1-24
Weber & Hall				1-24
Weber & Atz				1-24

Road Grading			Month:January 2022		
Road Name	Date	Machine Used	Loads	Materials	Comments
Raulerson Lane	1/6	Box Blade			
Wilson Lane	1/6	Box Blade			
Flashy Ln	1/6	Box Blade			
Richards Lane	1/6	Box Blade			
Raulerson Lane	1/7	Box Blade		3 Stabilizer	
Garden St	1/7	Box Blade			
Centre St	1/7	Box Blade			
Pine St	1/7	Box Blade			
Candy Ln	1/10	Box Blade			
Hunter Ln	1/10	Box Blade			
Billie Ln	1/10	Box Blade			
Matthews Ln	1/12	Box Blade			
MacDonald Ln	1/12	Box Blade			
Kelly Ln	1/12	Box Blade			
Cason Ln	1/12	Box Blade			
Moss Rose Ave	1/12	Box Blade			
Deleware Ave	1/12	Box Blade			
Quarterman Ln	1/18	Road Grader		2 Stabilizer	
North Oakridge Ln	1/18	Road Grader			
Elaine Ln	1/18	Box Blade			
Marie St South	1/18	Box Blade			

McCain Ln N&S	1/18	Box Blade			
Howell Ln N&S	1/18	Box Blade			
Rivet Ln	1/19	Box Blade			
Applyby Ln N&S	1/19	Box Blade			
Oakridge Ln South	1/19	Box Blade			
Linrose Ln N&S	1/19	Box Blade			
Duncil Ln South	1/19	Road Grader			
Kramer Ln	1/19	Road Grader			
Waring Ln	1/19	Road Grader			
Fins Ln	1/20	Box Blade			
Sandy Creek Ln	1/20	Box Blade			
Gatorway Ln	1/20	Box Blade			
Duncil Ln North	1/20	Box Blade			
Isasa Ln	1/20	Box Blade			
Orange Ave	1/21	Box Blade			
Passaic Ave	1/21	Box Blade			
New Jersey Ave	1/21	Box Blade			
Marshall Ln	1/21	Box Blade			
Sandhill Trailhead Park	1/21	Box Blade			
Arnold Ln	1/21	Box Blade			
Raulerson Ln	1/21	Box Blade			
Wilson Ln	1/21	Box Blade			
Candy Ln	1/24	Box Blade			

Hunter Ln South	1/24	Box Blade			
Billie Ln	1/24	Box Blade			
Waring Ln N	1/24	Box Blade			
Cason Ln	1/25	Box Blade			
Malabar Community Park	1/25	Box Blade			
McCain Ln North	1/25	Box Blade			
Beran Ln	1/25	Box Blade			
Hard Way Ln	1/25	Box Blade			
Reese Ln	1/25	Box Blade			
Reble Ln	1/25	Box Blade			
McCain Ln	1/31	Box Blade			
Howell Ln N&S	1/31	Box Blade			
Rivet Ln	1/31	Box Blade			
Appleby Ln N&S	1/31	Box Blade			
Ivey Ln	1/31	Box Blade			
Arnold Ln	1/31	Box Blade			
TOTALS	11 Days	2 Machines	5 Loads of Stabilizer		

Ditch Cleaning

Month: January 2022

Road Name	Date	Start Location	End Location	Side of Road	Loads	Yards	Comments
Candy Lane	1/4	Atz Road	400 Ft	West	7	105	Completed
Hall Rd	1/11	Rivet Ln	McCain Ln	North	15	225	Completed
Hall Rd	1/13	McCain Ln	Howell Ln	North	10	150	Completed
Hall Rd	1/14	McCain Ln	Marie St	North	6	90	Completed
Totals	4 Work Day				38 Loads	570 Yards	

Slope Mowing / Flat Mowing January 2022

	Road Name	Date	Ditch Side (N, S, E, W)	Grass	Brush	Ditcher
1	Hall Road (East)	1/3	North/South		X	
2	Candy Lane	1/3	East/West		X	
3	Weber Road (North)	1/3	East		X	
4	Atz Road (East)	1/3	North		X	
5	Hunter Lane North	1/4	East		X	
6	Atz Road (Center)	1/5	North/South		X	
7	Hunter Lane North	1/5	West		X	
8	Township Road	1/6	South		X	
9	Billie Lane	1/6	South		X	
10	Hunter Lane South	1/6	East/West		X	
11	Matthews Lane	1/7	East/West		X	
12	Flashy Lane	1/7	East/West		X	
13	Old Mission Lane	1/11	North/South		X	
14	Beran Lane	1/11	East		X	
15	Hard Way Lane	1/11	East/West		X	
16	Reese Lane	1/14	West		X	
17	Weber Road (South)	1/18	East		X	
18	Weber Road (Central)	1/19	West		X	
19	Corey Road (North)	1/19	West		X	

20	Firehouse Entrance	1/19	West			X	
21	Corey Road (Central)	1/20	West			X	
22	Rocky Point Road (North)	1/24	East			X	
23	Benjamin Road	1/24	North			X	
24	Rocky Point Road	1/25	West			X	
25	Reef Place	1/25	East/West			X	
26	Treadwell Lane	1/25	East/West			X	
27	Corey Road (Central)	1/26	East			X	
28	Leghorn Road	1/27	East/West			X	
29	Rocky Point Road (North)	1/27	East/West			X	
30	Marie Street	1/27	East/West			X	
31	Hunter Lane	1/27	East/West			X	
32	Malabar Community Park	1/28	West			X	
33	Fern Creek Park	1/31	West	X		X	
34	Briar Creek Blvd	1/31	North	X		X	
	Glatter Road	1/31	South	X			
36	Elaine Lane	1/31	West	X			
37	Hall Road	1/31	West	X			
TOTALS		16 Days			2 Machines Used		

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 10.a.
Meeting Date: February 07, 2022

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Final Reading at Public Hearing and Adoption of Comprehensive Plan Amendment 21-02ESR within Ordinance 2021-16 to provide for a Property Rights Element

BACKGROUND/HISTORY:

Malabar Ordinance 2021-16 summarizes the reasons for adopting the Property Rights Element into the Comp Plan within the "**Whereas**" statements.

Malabar Ordinance 2021-16 summarizes the steps taken by the Town to comply with the adoption steps required by F.S. 163 within "**Sections**" statements.

We have advertised this for final adoption and will submit the approved Ordinance to the State DEO.

ATTACHMENTS:

Ordinance 2021-16

Letter from FDEO dated 12/22/2021

ACTION OPTIONS:

Adopt Ord 2021-16.

ORDINANCE 2021-16

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02 BY ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS TO THE COMPREHENSIVE PLAN; RECEIVING NOTIFICATION OF COMPLIANCE FROM THE STATE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3167, Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to guide its future development and growth; and

WHEREAS, Section 163.3177(6)(i)1., Florida statutes, requires the Town of Malabar to maintain a Comprehensive Plan to include a Property Rights Element; and

WHEREAS, The Town of Malabar respects judicially acknowledged and constitutionally protected private property rights; and

WHEREAS, The Town of Malabar respects the rights of all people to participate in land use planning processes; and

WHEREAS, this ordinance will amend the Town of Malabar's Comprehensive Plan by adding a Property Rights Element.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The Comprehensive Plan of the Town is hereby amended by adding a Property Rights Element attached as Exhibit "A" and made a part of this ordinance as if set forth in full.

SECTION 2. It is the intention of the Malabar Town Council to adopt the amendment to the Comprehensive Plan. The Clerk of the Town is hereby directed to incorporate the approved Comprehensive Pain Amendment into the Comprehensive Plan of the Town.

SECTION 3. Town Staff was directed to upload one full copy of the adopted amendment to the State Department of Economic Opportunity and request Expedited State Review and send additional copies to the other five State Agencies, FDOT, FDEP, FDOS, ECFRPC and SJRWMD.

SECTION 4. Town Staff did not receive any adverse comments from the reviewing agencies and intends to go forward with adopting this new Element to the Comprehensive Plan as submitted to the State DEO to provide for Property Rights when considering land use decisions.

SECTION 5. The Mayor and Town Staff received confirmation from the State DEO on December 22, 2021, that that they had reviewed the amendment and found it to be in compliance and to proceed with the final adoption of the Amendment 2021-02 in Ordinance 2021-16.

SECTION 6. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 7. The effective date of this plan amendment, as it was not timely challenged, shall be 31 days after the state land planning agency notified Malabar that the plan amendment package was in compliance or January 22, 2022. Due to the holidays and the advertising requirements

Council will not vote on the final adoption until February 7, 2022, which will become the official effective date.

The foregoing Ordinance was moved for final adoption by Council Member _____ The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

- Council Member Marisa Acquaviva _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member David Scardino _____
- Council Member Mary Hofmeister _____

This ordinance was then declared to be adopted this 7th day of February 2022.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST

Debby K. Franklin, C.M.C.
Town Clerk / Treasurer

Council Discussion: 8/16/2021
P&Z Board Review: 8/25/2021
Transmittal Council Reading: 9/14/2021
Transmitted to State DEO successfully 12/01/2021
DEO found to be in compliance notification: 12/22/2021
Final Adoption Reading 02/07/2022

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr.
Town Attorney

EXHIBIT "A"

Large Scale Amendment (LSA) 2021-02ESR

August 2021

Malabar Comprehensive Plan

Element 10 – Property Rights

Goal: The Town of Malabar will make decisions with respect for private property rights with respect for people's right to participate in decisions that affect their lives and property.

Objective 1. The Town of Malabar will respect judicially acknowledged and constitutionally protected private property rights.

Policy 1.1. Property Interests. The Town of Malabar will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property including easements, leases, or mineral rights.

Policy 1.2. Property Usage. The Town of Malabar will consider in its decision-making the right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to State law and local ordinances.

Policy 1.3. Privacy and Exclusion. The Town of Malabar will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.4. Disposition of Property. The Town of Malabar will consider in its decision-making the right of a property owner to dispose of his or her property through sale or gift.

Ron DeSantis
GOVERNOR



Dane Eagle
SECRETARY

December 22, 2021

The Honorable Patrick T. Reilly
Mayor, Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

Dear Mayor Reilly:

The Department of Economic Opportunity ("Department") has reviewed the proposed comprehensive plan amendment for the Town of Malabar (Amendment No. 21-02ESR) received on December 6, 2021. The review was completed under the expedited state review process. We have no comment on the proposed amendment.

The Town should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment. In addition, the Town is reminded that:

- Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the Town. **If the Town receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.**
- **The second public hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, must be held within 180 days of your receipt of agency comments or the amendment shall be deemed withdrawn unless extended by agreement with notice to the Department and any affected party that provided comment on the amendment pursuant to Section 163.3184(3)(c)1., F.S.**
- **The adopted amendment must be rendered to the Department.** Under Section 163.3184(3)(c)2. and 4., F.S., the amendment effective date is 31 days after the Department notifies the Town that the amendment package is complete or, if challenged, until it is found to be in compliance by the Department or the Administration Commission.

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
(850) 245.7105 | www.FloridaJobs.org | www.Twitter.com/FLDEO | www.Facebook.com/FLDEO

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

If you have any questions concerning this review, please contact Paul Lim, Planning Analyst, by telephone at (850) 717-8511 or by email at Paul.Lim@deo.myflorida.com.

Sincerely,



Kelly D. Corvin, Regional Planning Administrator
Bureau of Community Planning and Growth

KDC/pl

Enclosure(s): Procedures for Adoption

cc: Debby Franklin, Town Clerk/Treasurer, Town of Malabar
Hugh Harling, Jr., PE, East Central Florida Regional Planning Council

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.b.
Meeting Date: February 07, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: 2nd Reading and Public Hearing on Ord 2022-01 - Codification of Solid Waste Franchise Agreement

BACKGROUND/HISTORY:

The Town Council voted to approve the contract with Waste Pro of Florida Inc. on November 15, 2021. In order to update the Code Book we need to adopt this ordinance to codify the Franchise Agreement.

First reading was held on January 3, 2022 and it was legally advertised for a public hearing at this meeting.

ATTACHMENTS:

- Ordinance 2022-01 directing the Agreement be added to Malabar Code Book

ACTION OPTIONS:

Council Adoption of Ord 2022-01

MALABAR ORDINANCE 2022-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA REPEALING AND REPLACING ORDINANCE 2014-12 AND ALL OTHER SOLID WASTE AND RECYCLABLE MATERIAL FRANCHISE ORDINANCES AND AGREEMENTS IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES REPLACING SUCH RERPEALED FRANCHISE ORDINANCES AND AGREEMENTS WITH ORDINANCE 2022-01 GRANTING AN EXCLUSIVE SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO of FLORIDA, INCORPORATED AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar, Florida, on November 15, 2021, awarded the service contract to Waste Pro of Florida, Inc. which granted them exclusive solid waste and recyclable collection within the Town of Malabar. The contract agreement is attached to this ordinance as Exhibit "A" and shall become part of this Ordinance replacing Ordinance 2014-12.

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Malabar, Florida:

SECTION 1: Article IV, Solid Waste, of the Franchise Section in Appendix A of Volume 1, identified as Ordinance No. 2014-12, of the Malabar Code of Ordinances is repealed in its entirety and replaced to read as follows:

"ARTICLE IV SOLID WASTE ORDINANCE 2022-01

SECTION 1. Effective date, Commencement date, Term and Consideration

GRANTING OF FRANCHISE TERM AND CONSIDERATION

Waste Pro of Florida Inc., is granted the exclusive right, privilege and/or franchise to operate upon, over and across streets, bridges and other public thoroughfares of the Town of Malabar for the purpose of collecting, removing and disposing of solid waste, recycling, yard waste and bulk waste material from the residences and commercial businesses in the Town of Malabar beginning January 1, 2022 subject to the terms, conditions and exceptions contained in the Contract Agreement attached as Exhibit "A" which such exhibit shall and is made an integral part of this ordinance and which provides in part as follows;

- A. Effective date of this Agreement was December 6, 2021, when the Agreement was signed. The commencement date shall be January 1, 2022.
- B. Initial term shall be for six (6) years and shall automatically renew for up to three (3) additional 3-year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.
- C. The initial rate for residential services shall be \$43.88 per month for twice per week collection of solid waste & once per week collection of Recyclables & once per week unlimited yard waste and 12 cubic yards of Bulky/White goods. Construction and Demolition or C&D Debris and Contractor generated waste is not included in this coverage.
- D. Waste Pro of Florida Inc. shall pay a Franchise Fee of five (5) percent on all

services rendered to the Town on a quarterly basis due in the month following the end of the quarter. For example, the first quarter ends on March 31, the franchise payment is due to the Town in April.”

SECTION 2: CONFLICTS

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: CODIFICATION

Provisions of this Ordinance and Exhibit “A” shall be incorporated into Article IV, Solid Waste, Appendix A, Franchises, Volume 1 of the Malabar Code of Ordinances as directed by this ordinance.

SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect five (5) days after adoption at second reading.

This Ordinance was moved for adoption by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

- Council Member Marisa Acquaviva _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member David Scardino _____
- Council Member Mary Hofmeister _____

This Ordinance was then declared to be duly passed and adopted this 7th day of February 2022.

TOWN OF MALABAR

By:

(seal)

Mayor Patrick T. Reilly, Council Chair

1st Reading: 1/03/2022

2nd Reading: 2/07/2022

ATTEST:

Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney

EXHIBIT "A"

41-page Agreement Between

Town of Malabar

Waste Pro of Florida, Incorporated

Approved by Malabar Town Council 11/15/2021

Signed 12/6/2021

Commencing January 1, 2022

Codified with Ordinance 2022-01 adopted 2/7/2022

**RESIDENTIAL & COMMERCIAL FRANCHISE
AGREEMENT FOR SOLID WASTE, RECYCLING, YARD
WASTE, AND BULK WASTE COLLECTION SERVICES
AGREEMENT**



Agreement
Between

Town of Malabar

and

Waste Pro of Florida, Inc.

Approved by Town Council, November 15, 2021

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SOLID WASTE, RECYCLABLES, AND BULK WASTE COLLECTION AND DISPOSAL AGREEMENT

Town of Malabar, Florida

This Contract is made and entered into this 6 day of Dec., 2021, between the Town of Malabar, a municipal corporation of the State of Florida, Brevard County, Florida, hereinafter referred to as "TOWN," and Waste Pro of Florida, Inc. authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, the TOWN and CONTRACTOR hereby agree as hereinafter set forth:

SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

- A. Effective and Commencement Dates. The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that Collection services required pursuant to this Contract commence, or January 1, 2022.
- B. Initial Term. The term of this Contract shall be for a six (6) year period beginning on the Commencement Date, not later than January 1, 2022, and terminating December 31, 2027.
- C. Renewal Option. This Contract shall automatically renew for up to three (3) additional three (3) year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.

SECTION 2. DEFINITIONS

For the purpose of this RESIDENTIAL & COMMERCIAL FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLING, YARD WASTE, AND BULK WASTE COLLECTION SERVICES AGREEMENT, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated or otherwise in conflict with Florida law. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the TOWN Code shall control except where preempted by Florida law, in which case Florida law shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. Biohazardous or Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics, hospitals, and other facilities processing waste that may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves, and shall also include those waste products which are defined as biohazardous or biochemical waste under Chapter 62 and 64E of the Florida Administrative Code and Chapter 381 of the Florida Statutes.
- B. Bulk Trash means those wastes that may require special handling and management and which by reason of bulk, shape, or weight cannot be placed in a Container. Bulk Trash includes, but is not limited to, furniture and fixtures, mattresses, White Goods, equipment, and any and all household goods that are customary to ordinary housekeeping operations of a Residential Service Unit. Bulk Trash must be generated by the customer at the Residential Service Unit at which the Bulk Trash is placed for Collection. Bulk Trash does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.
- C. Bulk Waste means the combination of Bulk Trash and Yard Trash. Bulk Waste must be generated by the customer at the Residential Service Unit at which it is placed for Collection. Bulk Trash and Yard Trash shall

be kept separate, and cannot be mixed by the customer. Bulk Waste does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.

- D. Business(es) means all retail, professional, wholesale, agricultural, industrial facility, or any other commercial enterprises offering goods or services to the public or other businesses; any church, synagogue, mosque, or other house of worship; and any schools or other institutions.
- E. Certificate of Occupancy means a document produced by the Town certifying that a newly constructed building has been constructed in compliance with Town specifications and Florida Building Code and is suitable for use.
- F. Collection means the process whereby Solid Waste, Recyclable Materials, Yard Waste or Bulk Waste is removed and transported to the facilities designated in this Contract.
- G. Commencement Date means the date Collection services pursuant to this Contract commence, prior to January 1, 2022.
- H. Compactor means any container that has a compaction mechanism, whether stationary or mobile.
- I. Construction and Demolition Debris or C&D Debris means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a homeowner generated, "do-it-yourself" construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that results from land clearing or land development operations for a construction project. All contractor related debris and yard waste must be removed by the contracted services and or property owner.
- J. Container means any container intended for Collection.
- K. Contract means this agreement, including all attachments and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as provided herein.
- L. Contract Administrator means the Town Manager or designee.
- M. Contract Year means the time from the Commencement Date through December 31, 2022, and each year thereafter during the term of the Contract.
- N. CONTRACTOR means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- O. Contractor-Generated Waste means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- P. County means Brevard County, Florida.
- Q. Designated Disposal Facility means the disposal facility designated by the TOWN.
- R. Designated Materials Recovery Facility or Designated MRF means the facility designated by the TOWN for delivery of all Residential Recyclable Materials collected pursuant to this Contract. The designated facility for collected recycling material as defined in Section 9, Designated Facilities.
- S. Dumpster means any metal container, with a capacity of two (2) or more cubic yards, designed or intended to be mechanically dumped into a loader packer type garbage truck.

- T. Effective Date means the date this Contract is executed by both the TOWN and CONTRACTOR.
- U. Exempt Waste means Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, construction and demolition waste, tree parts or that is more than four (4) feet in length in its longest dimension, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, those wastes under the control of the Nuclear Regulatory Council, Contractor-Generated Waste, and those other materials whose size and/or weight are in excess of that allowed for Bulk Waste as defined herein.
- V. Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future federal, state, or local law.
- W. Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide Residential and/or Commercial Collection Service or to maintain office hours. For the purposes of this Contract, Holiday shall only mean New Year's Day, Memorial Day, Independence Day, Veterans Day, Thanksgiving Day and Christmas Day, and any day that the landfill closes, unless additional Holidays are approved by the Contract Administrator.
- X. Non-Collection Notice means a durable tag, sign, and/or sticker placed on any Container or waste that has been set out for Collection by a customer but is not collectable in accordance with the provisions of this Contract and, therefore, has not been collected by the CONTRACTOR.
- Y. Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as Residential Solid Waste. Recyclable Materials include newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-2, tin and ferrous cans, and other materials added by the TOWN.
- Z. Recycling Bin means a rigid rectangular receptacle made of plastic or other suitable substance of no less than eighteen (18) gallons for the Collection of Recyclable Materials.
- AA. Residence means any individual living unit in a single-family structure or building intended for, or capable of being utilized for, residential living. For the purposes of this Contract, the term Residence shall include a living unit that adjoins or is part of a building from which a duly licensed business is conducted or operated.
- BB. Residential Collection Service means the Collection of Residential Waste from all Residential Service Units in the Service Area and the delivery of such materials to the facilities designated in this Contract.
- CC. Residential Customer means the occupant of the Residential Service Unit that receives Collection services pursuant to this Contract.
- DD. Residential Service Unit means any Residence receiving Residential Collection Service pursuant to this Contract.
- EE. Residential Waste means Solid Waste, Bulk Waste, and Recyclable Materials generated by Residential Customers and by the Town.
- FF. Roll Cart (or Cart) means a wheeled container designed and intended to be used for automated or semi-automated Collection of Solid Waste and/or Recyclable Materials that is a type and size approved by the Town.
- GG. Roll-off Container means any open-top Container of a capacity of ten (10) cubic yards or more.

- HH. Service Area means the municipal limits of the TOWN. Town limits may be amended during the contract term by actions of Town Council or State of Florida
- II. Sludge means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances, or any other such waste having similar characteristics or effects.
- JJ. Solid Waste means garbage, rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, agricultural, or governmental operations. For the purposes of this Contract, the only things Solid Waste excludes are Recyclable Materials, Exempt Waste, and Residential Bulk Waste.
- KK. TOWN means the Town of Malabar, Florida.
- LL. Town Council or Council means the governing body of the Town of Malabar, Florida.
- MM. White Goods means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer at the Residential Service Unit at which the White Goods are placed for Collection.
- NN. Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- OO. Yard Trash means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension. Yard Trash must be generated by the customer at the Residential Service Unit at which the Yard Trash is placed for Collection. Yard Trash includes Christmas trees (with all decorations removed), but does not include Contractor-Generated Waste or Exempt Waste. Yard trash does not include vegetative or bulk material that is generated as the result of a hurricane or other declared disaster event.

SECTION 3. GENERAL DESCRIPTION OF CONTRACTOR'S SERVICES

- A. Exclusive Contract. The CONTRACTOR is herein granted an exclusive Contract to provide Residential and Commercial Collection Service within the TOWN. The CONTRACTOR is not granted the exclusive right to collect C&D Debris. The CONTRACTOR may provide C&D Debris collection services at competitive rates that shall not be controlled by this Contract.
- B. Services to be Provided. The CONTRACTOR shall provide Residential Collection Service to all Residential Service Units and to the Town within the Service Area. The CONTRACTOR shall transport and deliver all Solid Waste, Recyclable Materials, and Bulk Waste collected pursuant to this Contract to the facilities designated herein. CONTRACTOR agrees and understands that the Residential Bulk Waste is not required to be containerized in cans or plastic bags. CONTRACTOR further agrees and understands that CONTRACTOR is responsible for collecting any Residential Waste that has spilled or is no longer containerized, unless such spillage is clearly not caused by the CONTRACTOR or an employee of the CONTRACTOR.
- C. Exempt Waste. The CONTRACTOR shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such collection and disposal of Exempt Waste are not regulated under this Contract, but if provided by the CONTRACTOR shall be in strict compliance with all federal, state, and local laws and regulations.
- D. Responsibility for Billing. The CONTRACTOR shall be responsible for the billing and collection of payments for Residential and Commercial Collection Service. The CONTRACTOR shall be responsible for the billing

and collection of payments for providing and servicing extra Residential Roll Carts, special collection services requested and provided to Residential Customers as outlined in Section 5.D of this Contract.

SECTION 4. TRANSITION IN SERVICE

- A. Transition Prior to Commencement Date of Service. The CONTRACTOR is responsible for providing a smooth transition in services to minimize inconvenience to Residential Customers. To accomplish this objective, the CONTRACTOR shall submit to the Contract Administrator, prior to the TOWN's execution of this Contract, a Transition Plan that provides a detailed description of how the CONTRACTOR will plan and prepare for initiating Collection services on the Commencement Date. The Transition Plan must meet the approval of the Contract Administrator. If the Contract Administrator does not approve any part of the Transition Plan, CONTRACTOR shall provide a revised proposed Transition Plan within five (5) Work Days of notification. At a minimum, the CONTRACTOR must address the specific performance requirements listed below in the Transition Plan and accomplish them according to deadlines specified in the TOWN-approved plan. This list is not intended to identify all necessary tasks to be performed by the CONTRACTOR, but to provide a springboard for the CONTRACTOR to develop a comprehensive Transition Plan.
- (1) **Contact List:** List of key transition personnel including, but not limited to, service transition project manager, education and outreach coordinator, and operations director (or similarly titled positions).
 - (2) **Transition Meeting and Call Schedules:** Proposed meeting and call schedules including, but not limited to, meetings with the Contract Administrator, Town staff, and outgoing contractor leading up to the Commencement Date.
 - (3) **Office:** Schedule for setting up an office, installing local telephone number routed to the office, and training staff to begin receiving calls.
 - (4) **Fleet:** Schedule for ensuring that all vehicles are street legal (registered, insured, licensed, and tagged) and providing a vehicle/equipment list and route summary to the Contract Administrator. For all new purchases, CONTRACTOR shall provide a list of vehicles, manufacturer, purchase order, and documentation of anticipated delivery date.
 - (5) **Staffing and Training:** Schedule for obtaining necessary labor and training staff on equipment and routes.
 - (6) **Routing:** Schedule for developing Solid Waste, Recyclables, and Bulk Waste routes, identifying obstacles such as low trees and overhead wires, and conducting dry-runs of collection routes.
- B. Transition Prior to Expiration of this Contract.
- (1) Should the TOWN choose not to exercise the renewal option of this Contract or should no renewal options remain, the TOWN anticipates awarding a new contract at least six (6) months prior to the expiration of this Contract or any subsequent renewals. In the event a new contract has not been awarded within such time frame, the CONTRACTOR agrees to provide service to the TOWN for up to an additional one hundred and eighty (180) day period beyond the expiration of the Contract, provided the TOWN requests said services, in writing, at such time. The service rates for this additional period will be adjusted as they normally would on January 1 as specified in Sections 11 and 12 of this Contract.
 - (2) At the expiration of this Contract, the CONTRACTOR shall work with the TOWN and the newly selected hauler to ensure a smooth transition period with no interruption of service, including, but not limited to, compliance with the following performance requirements:
 - (a) Attend coordination meetings with the TOWN and newly selected hauler, as requested.

- (b) Work with the newly selected hauler to develop a mutually agreeable schedule for removal of CONTRACTOR-owned Containers and placement of newly selected hauler's containers. The schedule shall ensure no interruption in solid waste services.
 - (c) Allow the newly selected hauler to purchase or rent for up to ninety (90) days, CONTRACTOR-owned Containers from the CONTRACTOR. The purchase price and/or rental shall be negotiated.
- (3) The TOWN reserves the right to withhold payment to CONTRACTOR for the final month of service until CONTRACTOR has complied with all requirements of this Section.

SECTION 5. RESIDENTIAL COLLECTION SERVICE

A. Residential Solid Waste Collection.

- (1) The CONTRACTOR shall provide Residential Solid Waste Collection to all Residential Service Units in the Service Area two (2) time(s) per week with not less than forty-eight (48) hours or more than seventy-two (72) hours between regularly scheduled pickup days, with the exception of Holidays as set forth herein. Residential Solid Waste Collection shall occur twice per week on days agreed to between the Town and Contractor, unless a modification is approved by the Contract Administrator.
- (2) All Residential Solid Waste shall be properly containerized. All Solid Waste to be placed in contractor-provided carts with a capacity of not more than ninety-six (96) gallons and weighing not more than fifty (50) pounds. CONTRACTOR is expected to pick up additional boxes, that may be placed next to Roll Carts. Residential Customers may request the CONTRACTOR to provide and service additional Solid Waste Roll Carts as specified in Section 6.B(3) of this Contract.
- (3) Hours: Residential Collection Service shall be provided commencing no earlier than 7:00 a.m. and terminating no later than 7:00 p.m. The hours and days of Collection may be extended due to extraordinary circumstances or conditions, with the prior written consent of the Contract Administrator.

B. Residential Bulk Waste Collection.

- (1) The CONTRACTOR shall provide Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash, to all Residential Service Units in the Service Area. Non-vegetative Residential Bulk Waste Collection shall occur on the solid waste collection days and vegetative bulk waste shall occur once per week, unless otherwise approved in writing by the Contract Administrator; large piles of vegetative bulk waste shall be collected within 5-7 days of solid waste route driver initiated or customer request to collector. Bulk Waste Collection is limited to twelve (12) cubic yards or as adopted by Town ordinance, per set-out.
- (2) If Bulk Waste exceeds the twelve (12) cubic yard limit, the CONTRACTOR will treat any amount above the twelve (12) cubic yard limit as a special collection service in accordance with Section 5.D(2).
- (3) The CONTRACTOR may collect Bulk Trash and Yard Trash in the same vehicle or in separate vehicles but shall collect such material in such a way that Yard Trash can be separated for recycling. Residents are asked to place non-containerized Yard Trash separate from Bulk Trash into an unobstructed pile to permit the CONTRACTOR to collect such Yard Trash with a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required. Collection of Yard Trash using a grapple or clam truck may be on the same collection day as Collection of Bulk Trash. Collection of Bulk Trash may use a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required.
- (4) The CONTRACTOR shall collect White Goods so that they can be recycled. White Goods must have refrigerant removed and be appropriately labeled prior to collection. Residents are asked to place

White Goods adjacent to other Bulk Trash but separate so as not to be obstructed. Even if residents fail to separate their White Goods, CONTRACTOR shall still utilize its best efforts to recycle commingled White Goods collected.

C. Residential Recyclables Collection.

- (1) The CONTRACTOR shall provide Residential Recyclables Collection to all Residential Service Units in the Service Area. This service shall be provided once every week on the day agreed to between the Town and Contractor, unless a modification is approved in writing by the Contract Administrator.
- (2) Residential Recyclables shall be collected in a single stream, meaning that paper and commingled containers may be placed in the same recycle cart. All Recyclables are to be placed in recycle carts. Residential Customers may request the CONTRACTOR to provide and service additional recycle carts as specified in Section 6.C(2) of this Contract.
- (3) Contractor and Town shall mutually agree on any additions or deletions of recyclable types to be collected. The addition of items shall be at no additional cost to the TOWN unless the CONTRACTOR can document that the addition of such items substantially impacts the cost of providing Residential Collection Service.

D. Residential Special Collection Service.

- (1) For an additional fee, Residential Customers may request special collection service from the CONTRACTOR that exceeds the base-level services outlined herein. CONTRACTOR shall be responsible for invoicing and collecting payment from Residential Customers for special collection services outside the scope of this contract. The TOWN is not liable for a Residential Customer's failure to remit payment to CONTRACTOR for any special collection service provided.
- (2) Bulk Waste in excess of twelve (12) cubic yard limit. If a Residential Customer places more than twelve (12) cubic yards of Bulk Waste curbside for Collection, the CONTRACTOR shall collect all Bulk Waste and shall invoice the Customer for the amount of Bulk Waste exceeding the twelve (12) cubic yard limit. This per cubic yard amount shall be as approved in the contract between the Town and the CONTRACTOR and is subject to annual CPI adjustment.
- (3) No Mixing of Residential Materials.
- (4) The CONTRACTOR shall collect Residential Solid Waste, Yard Waste, Bulk Waste, and Recyclable Materials generated in the TOWN separate from any Solid Waste, Yard Waste, Bulk Waste, or Recyclable Materials generated in another jurisdiction.
- (5) The CONTRACTOR shall not commingle Residential Recyclable Materials with other Residential Waste.

E. Side or Back Door Collection. Notwithstanding any term or definition set forth in this Contract, side or back door Collection of Residential Solid Waste and Residential Recyclable Materials from a Residential Service Unit shall be required if all adult occupants residing therein are disabled and if a request for side or back door Collection has been made to, and approved by, the Contract Administrator in the manner required by TOWN. The Contract Administrator shall notify the CONTRACTOR in writing of any customers requiring side or back door Collection. No additional monies shall be due to the CONTRACTOR for the provision of side or back door Collection to disabled Residential Customers. The CONTRACTOR will not be required to enter any buildings, garages or gated areas of the property to service a Residential Customer.

F. Hours. Residential Collection Service shall be provided Monday through Saturday, commencing no earlier than 7:00 a.m. and terminating no later than 7:00 p.m., with no service on Sunday. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions, with the prior consent of the Contract Administrator.

- G. Holidays. For collection of solid waste that occurs twice per week, in the event a Residential Customer's normal Collection Day falls on a holiday observed by the CONTRACTOR and accepted by the TOWN via this CONTRACT, Collection shall occur on the Residential Customer's next regularly scheduled Collection Day.
- H. Accessibility. All properly prepared Residential Containers, including Roll Carts, shall be placed within three (3) feet of the curb, swale, paved or unpaved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and customer, that will provide safe and efficient accessibility to the CONTRACTOR'S collection crew and vehicle. When possible, CONTRACTOR shall work to ensure that Containers, including Roll Carts, are placed in an upright position within three (3) feet of the curb, swale, roadway, or other such location agreed to by the CONTRACTOR and customer, that will help to ensure that no Container or Roll Cart impedes, alters, or prevents the vehicular traffic. In certain instances, properly prepared Residential Waste may be placed in driveway turnout areas to avoid placing it in the traveled roadway. The CONTRACTOR shall report monthly to the Contract Administrator all situations that prevent or hinder Collection on any premises.
- I. Manner of Collection.
- (1) The CONTRACTOR shall provide Residential Collection Service with as little noise and disturbance as possible.
 - (2) CONTRACTOR's employees shall completely empty any Container without obstructing alleys, roadways, driveways, sidewalks, or mailboxes. Roll Carts shall be placed in an upright position with the lid closed. Containers with unattached lids shall be placed either in an upright position with the lid set on top or in an inverted position with the lid placed underneath to help prevent the lid from flying away or if that is impractical directly behind the Container.
 - (3) CONTRACTOR'S employees shall follow the regular walk for pedestrians while on private property. No trespassing by CONTRACTOR'S employees will be permitted or crossing property to the adjoining premises unless the occupant or owner of both properties has given permission. Care shall be taken to prevent damage to property, including flowers, shrubs, and other plantings. CONTRACTOR is responsible for repairs to all damaged property, public or private, caused by CONTRACTOR.
 - (4) CONTRACTOR's Collection vehicles shall remain on the right-hand side of the road when providing Residential Collection Service on two-way streets with center stripes. At no time shall collection crews cross to the opposite side of a street with center stripes to retrieve Containers, Roll Carts, or materials that have been set out for Collection. In situations where it is impossible or difficult to turn around to serve a location from the right side of the vehicle, then left-side service is permitted, but only in a manner that ensures the safety of residents and collection workers and only when approved by the Contract Administrator. At no time shall collection workers use the riding steps when the vehicle is backing up, exceeding 10 miles per hour, or traveling more than 0.2 miles.
- J. Spillage. The CONTRACTOR shall clean up any Residential Solid Waste spilled from a Container by the CONTRACTOR, or its employees or Residential Bulk Waste spilled or scattered by the CONTRACTOR or its employees prior to proceeding to the next customer, if reasonably possible, but in no event prior to the end of that pick-up day. Care shall be taken by CONTRACTOR'S employees to prevent damage to Containers by unnecessary rough treatment.
- K. Routes and Schedules. The CONTRACTOR shall provide the Contract Administrator with schedules for all Residential Collection Service routes in accordance with the Transition Plan and shall always keep such information current. If any changes in the Collection routes occur, the Contract Administrator shall be immediately notified in writing. No permanent change in routes or schedules that will alter the days of Residential Waste Collection may be made without the prior written consent of the Contract Administrator.

In the event a permanent change in routes or schedules that will alter the days of Residential Waste Collection is approved by the Contract Administrator, the CONTRACTOR shall immediately notify the affected Residential Customers, in writing or other manner as approved by the Contract Administrator, not less than two (2) weeks prior to the change.

SECTION 6. RESIDENTIAL COLLECTION CONTAINERS

- A. Customer-Provided Containers. Within three (3) Work Days of being notified by a Residential Customer or the TOWN that CONTRACTOR or its employees destroyed the customer's container, CONTRACTOR shall provide the Residential Customer with a container of comparable size and quality. CONTRACTOR is not responsible for a replacement Container if it can satisfactorily prove to the Contract Administrator that CONTRACTOR or its employees did not damage the customer's Container. Prior to payment or replacement of the Container, the Residential Customer shall give CONTRACTOR their damaged Container for disposal.
- B. Purchase and Distribution of Solid Waste & Recycle Roll Carts.
- (1) The standard Solid Waste Roll Cart shall be sixty-four (64) gallons or similar in size. However, CONTRACTOR shall make ninety-six (96) gallon (or similar in size) Solid Waste Roll Carts available upon request by a Residential Customer. Prior to assembly and distribution of Solid Waste Roll Carts, CONTRACTOR may conduct a survey of Residential Customers to determine which size Solid Waste Roll Cart they prefer. If CONTRACTOR plans to conduct such a survey, the details of such survey shall be included in the Transition Plan and the survey and method of collection of survey data must be approved by the TOWN in advance of its distribution.
 - (2) Upon request by a Residential Customer, CONTRACTOR shall exchange a Solid Waste Roll Cart with an alternatively sized Roll Cart within five (5) Work Days of request for such exchange by the customer or TOWN. CONTRACTOR shall provide one (1) Solid Waste Roll Cart exchange per Residential Customer during the initial Contract term at no charge to the customer or the TOWN. Should a Residential Customer request additional exchanges, CONTRACTOR may charge the Residential Customer an Exchange Fee in accordance with Exhibit 1.
 - (3) Upon request by a Residential Customer, CONTRACTOR shall provide more than one (1) Solid Waste Roll Cart to accommodate extra materials. CONTRACTOR shall charge Residential Customer for each extra Solid Waste Roll Cart for an additional unit in accordance with Exhibit 1. CONTRACTOR shall provide additional Solid Waste Roll Carts within five (5) Work Days of request by a Residential Customer or the TOWN. If a Residential Customer desires the Collection of the extra Solid Waste Roll Cart(s), CONTRACTOR shall issue an annual invoice for the Collection that shall be paid directly by the Residential Customer to CONTRACTOR in accordance with the rate schedule provided in Exhibit 1. Such annual invoice shall be prorated based upon the 1st day of the month that Collection commences, and it shall be based upon a calendar year. CONTRACTOR shall send all renewal invoices to the Residential Customers in December of each calendar year. CONTRACTOR shall not be required to collect any extra Solid Waste Roll Cart(s) unless it has been paid to collect same. Residential Customer may cancel its extra Solid Waste Roll Cart(s) Collection at any time, but such cancellation shall only go into effect the next calendar year. Cancellation shall not be effective until such time Customer returns extra cart to Contractor. Residential Customers who cancel their extra Collection shall not receive a proration for services, nor shall they be able to seek a credit for failure to utilize this service. The TOWN is not liable or responsible for any payment to CONTRACTOR for the failure of payment by a Residential Customer, or for CONTRACTOR's collection of such extra waste.
 - (4) CONTRACTOR shall provide a transition plan to the Contract Administrator, which is subject to the approval of the Contract Administrator. The transition plan shall include the information specified below:

- (a) Cart Procurement: Schedule for purchase and manufacturing of CONTRACTOR-provided Roll Carts for Residential Collection Service including artwork approval by TOWN and prototype delivery. The TOWN retains the right to require acceptable documentation including, but not limited to, purchase orders, delivery schedules, and receipts of payment.
- (b) Cart Assembly and Distribution (A&D): Schedule for Roll Cart A&D including cart shipment dates, days and hours of operations, and completion of A&D. All Roll Carts shall be delivered to all customers at least one (1) week prior to the Commencement Date. An A&D plan shall also be included two (2) weeks prior to the Commencement date identifying A&D contractor, if applicable, and contact information, staging areas, A&D route schedule, and expected number of carts delivered per day.
- (c) Cart Swaps: Schedule for Roll Cart swaps, including plan for receiving swap requests and initiating exchanges.

C. Purchase and Distribution of Recycling Carts.

- (1) Prior to the Commencement Date, the CONTRACTOR shall ensure that all Residential Customers desiring Recycling Carts are provided such. Recycling Carts shall be of a similar size and quality as those currently in use, meet the technical specifications provided in Exhibit 5, and be approved by the Contract Administrator. The CONTRACTOR shall provide Recycling Carts to all new Residential Customers within five (5) Work Days of notification of a new Residential Customer.
- (2) Upon request by a Residential Customer, CONTRACTOR shall provide more than one (1) Recycling Cart to accommodate extra recyclable materials. CONTRACTOR shall provide additional Recycling Roll Carts within five (5) Work Days of request by a Residential Customer or the TOWN.

D. Repair and Replacement of Solid Waste and Recycling Carts.

- (1) CONTRACTOR shall maintain a sufficient inventory of Solid Waste Roll Carts and Recycling Carts to be able to deliver new or replacement Roll Carts of the requested size within five (5) Work Days of receiving request.
- (2) CONTRACTOR shall repair or replace a Roll Cart within five (5) Work Days of receiving notice from the TOWN or customer of the need for repair, or if identified unserviceable by CONTRACTOR.
- (3) Any Roll Carts damaged by the CONTRACTOR, including extra Roll Carts, shall be replaced by the CONTRACTOR, at the CONTRACTOR's expense, at no cost or inconvenience to the Residential Customer.
- (4) The cost of replacing Roll Carts due to loss, theft (without documented police report), or destruction through no fault of the CONTRACTOR shall be charged by the CONTRACTOR to the Residential Customer for an amount not to exceed the rate schedule set forth in Exhibit 1. This fee shall be collected from the Residential Customer by the CONTRACTOR prior to delivery of the Roll Cart.

E. Ownership of Roll Carts. Ownership of Roll Carts provided by CONTRACTOR shall rest with the CONTRACTOR.

SECTION 7. RESIDENTIAL NON-COLLECTION PROCEDURES

- A. In the event Solid Waste contains Exempt Waste, Recyclable Materials are contaminated through commingling with Solid Waste, or other occurrence that would warrant legitimate non-collection by the CONTRACTOR, the CONTRACTOR shall affix a Non-Collection Notice to the Container or waste itself explaining why Collection was not made and explaining proper procedures for setting out Solid Waste, Bulk Waste, and Recyclable Materials.

- B. The design and content of all Non-Collection Notices must be approved by the Contract Administrator and the cost of printing and delivery of said notices shall be paid for by the CONTRACTOR.

SECTION 8. RESIDENTIAL BULK WASTE PROCESSING

- A. The CONTRACTOR is responsible for the transport, processing, marketing, and final disposal of all Residential Bulk Waste collected by the CONTRACTOR. Bulk Waste must be processed or disposed at a legally permitted and licensed facility(s) to process such materials, as agreed upon by the TOWN and CONTRACTOR. The Bulk Waste processing facility shall be Brevard County, Sarno Transfer Station 3379 Sarno Road, Melbourne, FL 32934, or such other facility(s) approved in writing by the Contract Administrator.
- B. To the extent practical, the CONTRACTOR shall recycle any recyclable items collected in the Residential Bulk Trash, including White Goods, and shall mulch, compost, or otherwise recycle Yard Trash. The CONTRACTOR shall record the quantities of Bulk Trash and Yard Trash recycled and the quantities disposed and shall report such quantities to the Contract Administrator for each month and the report shall be given to the Contract Administrator within the month following the report date.

SECTION 9. DESIGNATED FACILITIES

- A. Except as set forth below, all Residential Solid Waste collected by the CONTRACTOR shall be transported to, and disposed of, at any facility selected by the Contractor and approved by the TOWN. The designated facility for collected solid waste and bulk waste will be the Brevard County, Sarno Transfer Station 3379 Sarno Road, Melbourne, FL 32934.
- B. All Residential Recyclable Materials collected by the CONTRACTOR shall be delivered to a facility selected by the Contractor and approved by the TOWN. The designated facility for collected recycling material will be the Waste Management Recycling Center, 650 Townsend Rd., Cocoa, FL 32926.
- C. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Section 19 of this Contract and may result in the CONTRACTOR being in default under this Contract.

SECTION 10. ADDITIONAL SERVICES

- A. TOWN Services. The CONTRACTOR shall provide, at no cost to the TOWN, Solid Waste and Recyclables Collection services to all Town facilities, including the provision and servicing of Containers. Provided below is a list of services provided at the time of Contract execution. Services to be provided may be adjusted during the term of the Contract based on need.

Locations	Address	Service Frequency	Garbage Carts	Recycle Carts	Dumpster Size
Malabar Town Hall	2725 Malabar Rd	Twice Weekly	(1) 64-Gallon Cart	(1) 64-Gallon Cart	N/A
Malabar Fire Department	1810 Malabar Rd	Once weekly	(1) Dumpster	-	4 yards
Malabar Public Works Facility	1435 Centre St.	Once weekly	(1) Dumpster	-	4 yards
(2) Community Events	1850 Malabar Rd	Once per Event	(12) 64 Gallon Cart/One Time Use Containers	(6) 64 Gallon Cart/One Time Use Containers	N/A

- B. Public Awareness Program. The CONTRACTOR agrees to participate in public outreach events, at no charge to the Town, by providing up to twelve (12) hours per year of an outreach person's time at such public outreach events, provided that notice of at least two weeks is given. If the TOWN'S notice for CONTRACTOR'S cooperation under this Section is less than two weeks, CONTRACTOR, at its sole discretion, may agree to provide the requested outreach person.

SECTION 11. RESIDENTIAL RATES AND BILLING

- A. Customer Billing. Except as specifically provided herein, the CONTRACTOR shall be responsible for the billing and collection of payments for all Residential Collection Service. The CONTRACTOR shall be responsible for directly billing Residential Customers for providing and servicing extra Roll Carts and for providing special collection service as specified in Section 5.D of this Contract. Fees shall be deemed delinquent fifteen days after the end of billing cycle. Interest shall accrue on delinquent fees at the same rate provided in Section 55.03, Florida Statutes. The interest rates established by the Brevard County Chief Financial Officer is published at the following website: <http://brevardclerk.us/civil-judgment-interest-rates> .

To the full extent permitted by law, Contractor is hereby authorized to impose a lien against Residential Property as to which residential collection fees are delinquent ninety (90) days after the billing cycle. Provided however, Contractor agrees to use best efforts to collect delinquent fees by means other than the imposition of liens, such as collection agency, to include additional cost of said collection agency. Contractor shall have the right to recover fees for filing of lien. All liens for delinquent payments shall be imposed within one (1) year of becoming delinquent.

Contractor may terminate residential waste collection service, residential recyclable material collection service, or residential yard trash collection service for non-payment of delinquent payments. No owner or occupant shall avoid the use of or be excused from the payment of the applicable fees for, residential waste collection service, residential recyclable material collection, or residential yard trash collection service by virtue of non-payment.

Residential Service Unit Count. No later than October 1st, 2021, the TOWN will provide the CONTRACTOR with an initial list of Residential Service Units within the Service Area. In the event the CONTRACTOR does not agree with the Residential Service Unit count provided by the TOWN, the CONTRACTOR may request that the TOWN and the CONTRACTOR perform a joint physical count of the Residential Service Units in the Service Area.

- B. Service Rates. In accordance with the rates established in Exhibit 1, attached hereto and included herein, the collection elements of the initial service rate shall not be adjusted for the first year of the contract effective with the commencement of service date of no later than January 1, 2022.
- C. Service Rate Adjustments. The rates for Residential Collection Service shall be adjusted January 1, 2023, and annually thereafter each Contract Year, as described herein. Any requested adjustments must be submitted to the Town by October 1st of each year for the following fiscal year, beginning with October 1, 2022. An example of the calculation of such adjustment is provided in Exhibit 2. All rate adjustments shall be reduced to writing and signed by the CONTRACTOR representative identified in Section 25 and the Town Manager.
- D. Indexes for Adjusting Rates. The following indexes shall be used for calculating rate adjustments pursuant to this Contract. If either of these indexes is discontinued or substantially altered, the TOWN shall select another relevant index published by the United States Government or by a reputable publisher of financial and economic indexes.
- (1) The Consumer Price Index (CPI) used for adjusting rates shall be the Consumer Price Index for Series Id: CUUR0000SEHG02, Garbage and trash collection in U.S. city average, all urban consumers, not seasonally

adjusted as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics.

- (2) The Fuel Index used for adjusting rates shall be the Lower Atlantic (PADD 1C) Ultra Low Sulfur (15 ppm and under) Retail Diesel Prices (Dollars per Gallon) as published by the Energy Information Administration of the United States Department of Energy.
- E. Collection Element Adjustment. The collection elements of the Residential Collection Service rates shall be adjusted based on the Consumer Price Index and Fuel Index, as defined in this Section and illustrated in Exhibit 2.
- (1) Ninety-five percent (95%) of the collection elements of the Residential service rates shall be adjusted based on one hundred percent (100%) of the percentage change in the CPI for February of the previous year and February of the current year, rounded to the nearest hundredth of a percent.
 - (2) Five percent (5%) of the collection elements of the Residential service rates shall be adjusted based on the percentage change in the average monthly Fuel Index for the twelve (12) month period ending February of the previous year and the average monthly Fuel Index for the twelve (12) month period ending February of the current year, rounded to the nearest hundredth of a percent.
- F. Recycle Processing Fee. The recycle processing fee is new to the solid waste industry, has become a permanent fee, with pricing fluctuations. The current recycling processing fee at the Effective Date of this agreement is twenty-five dollars (\$25) per ton. The residential collection rate shall be adjusted based on the new recycle processing fee at the designated facility. The adjustment shall be calculated at time of increase as follows:
- New recycling processing fee (\$/ton) minus current fee, multiplied by total number of tons collected during previous twelve (12) months, divided by most recent house count, divided by twelve (12) months, equals adjusted amount to be added to monthly residential collection rate.
- G. Contract Preparation and Administration Expenses. The TOWN shall assume all expenses regarding contract preparation and general administration of the contract by TOWN employees.
- H. Recycling Revenues. The TOWN shall retain any revenue generated from the processing and sale of Residential Recyclable Materials after processing and transportations fees are paid.

SECTION 12. CHANGE IN LAW AND UNUSUAL CHANGES IN THE COST OF DOING BUSINESS

The CONTRACTOR may petition the TOWN for an additional rate adjustment resulting from a change in federal, state, or local laws or unusual cost of doing business. The CONTRACTOR'S request shall contain substantial proof and justification to support the need for the rate adjustment. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the TOWN, the Town Manager shall make a determination regarding the equity of the request and shall make a recommendation to the Town Council at a regular meeting. Adjusted Rates shall become effective upon approval by the Town Council.

SECTION 13. CONTRACTOR'S PERSONNEL

- A. The CONTRACTOR shall assign a qualified supervisor to oversee the operations within the Service Area and shall provide the name of that person in writing to the Contract Administrator annually and any other time the person in that position changes. The supervisor shall always be available to the TOWN by telecommunications equipment that the CONTRACTOR is providing Residential Collection Service. The

supervisor or their representative shall be available onsite within four (4) hours or before the end of the Work Day if requested by the Contract Administrator.

- B. The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.
- C. The TOWN may request the transfer of any employee of the CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.
- D. CONTRACTOR'S employees shall be required to wear a clean uniform shirt bearing the CONTRACTOR'S name.
- E. Each driver of a Collection vehicle shall at all times carry a valid Florida driver's license and all other required licenses for the type of vehicle that is being operated.
- F. CONTRACTOR'S employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the TOWN. The CONTRACTOR'S name shall be properly displayed on all Collection vehicles.

SECTION 14. SPILLAGE AND LITTER

- A. The CONTRACTOR shall not litter any premises in the process of providing Residential Collection Service. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection services so as to prevent spilling or dropping of Solid Waste, Bulk Waste, or Recyclable Materials during Collection activity and shall immediately, prior to proceeding to the next customer, if reasonably possible, but in no event prior to the end of that pickup day, clean up such spilled or dropped Solid Waste, Bulk Waste, or Recyclable Materials. The CONTRACTOR shall transport all Solid Waste, Bulk Waste, and Recyclable Materials in such a manner as to prevent the spilling or blowing from the CONTRACTOR'S vehicle.
- B. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street or other surface. When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning or remove contaminated surface soil or material and promptly replace with clean soil or surface material. CONTRACTOR shall provide the TOWN with a daily report of any such leakage, the location of such leakage, the vehicle at issue, and the remediation measures used to correct same.

SECTION 15. COLLECTION EQUIPMENT

- A. The CONTRACTOR shall always have on hand, in good working order, such collection equipment as shall permit the CONTRACTOR to adequately and efficiently perform the duties specified in this Contract. Any proposed change in the collection system being used by the CONTRACTOR during the Contract period shall be submitted in writing by the CONTRACTOR to the Contract Administrator.
- B. Residential collection vehicles shall be of a type sufficient to efficiently collect all Solid Waste, Yard Waste, Bulk Waste, and Recyclable Materials covered by this Contract, and transport such materials to the designated facilities in a manner such that no collected materials can be blown or fall from the vehicle during transport. The CONTRACTOR may utilize open-bed vehicles in the provision of Bulk Waste Collection; however, the vehicles must contain the Bulk Waste so that no material is spilled, leaked, or blown from the vehicle, and the vehicle must be covered with a securely fastened tarp during transport.

- C. Each collection vehicle shall always be equipped with: (a) all safety supplies, equipment, and first aid supplies required by applicable laws; (b) a fire extinguisher; (c) a heavy-duty broom, a rake, and a large dustpan or shovel; (d) a spill response kit; (e) an audible back-up warning device; and (f) back-up cameras. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from CONTRACTOR's collection vehicles.
- D. All equipment shall be kept well painted, shall clearly display CONTRACTOR's name, and shall be maintained in good repair, appearance, and sanitary, clean condition in order to meet community standards of appearance at all times. All collection equipment shall be leak-proof to prevent any liquid from draining onto the ground. The TOWN reserves the right, at its discretion, to require a vehicle be taken out of service for habitual leakage of oil, hydraulic fluid, or other liquids or other maintenance issues. Such vehicle shall not be placed back into service until and unless the TOWN is able to verify that the necessary repairs have been made.
- E. The CONTRACTOR shall have available to it, at all times, reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

SECTION 16. OFFICE

- A. The CONTRACTOR shall maintain an office where complaints can be received, and which provides toll-free telephone access for customers living in the TOWN. Such office shall be equipped with sufficient telephones, shall have responsible persons in charge, and shall be open 8:00 a.m. to 5:00 p.m. Monday through Friday on those days that the CONTRACTOR provides Residential Collection Service. The CONTRACTOR shall provide either a telephone answering service or mechanical device to receive customer inquiries during those times when the office is closed. Messages left on the answering service or mechanical device shall be responded to on the next Work Day.
- B. The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

SECTION 17. SERVICE INQUIRIES, COMPLAINTS, AND PROPERTY DAMAGE

- A. All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints shall be handled by the CONTRACTOR in a prompt and efficient manner. In the case of a dispute between a CONTRACTOR and a customer, the matter will be reviewed, and a decision made by the Contract Administrator.
- B. The CONTRACTOR will maintain a written record of all calls it receives regarding services provided pursuant to this Contract, including but not limited to inquiries, missed Collections, and complaints (Call Log). CONTRACTOR shall use a standard form for the Call Log, as approved by the Contract Administrator, to record the pertinent facts of each call, including but not limited to date and time of call; name, address, and telephone number of persons calling; reason for the call; action taken by CONTRACTOR; and date and time any issue was resolved. CONTRACTOR shall keep this Call Log up to date.
- C. For those complaints related to missed Collections, CONTRACTOR shall make every effort to return to the service address and collect the missed materials that same day. For missed Collection complaints that are received by noon on a Work Day, the CONTRACTOR must return to the service address and collect the missed materials that same day. For missed Collection complaints that are received after noon on a Work Day, the CONTRACTOR must return to the service address and collect the missed materials by noon of the following Work Day.

- D. For those complaints related to repair or replacement of Roll Carts, the appropriate subsections of Section 6 of this Contract shall apply.
- E. The CONTRACTOR shall be responsible for the prompt repair or replacement, if repair is not adequate, of any damage to public or private property during the provision of Residential Collection Service and caused by the CONTRACTOR or the CONTRACTOR'S representative. Within twenty-four (24) hours of occurrence, the CONTRACTOR shall provide the Contract Administrator with a full explanation of the disposition of any complaint involving a claim of damage to public or private property as a result of actions of the CONTRACTOR. The CONTRACTOR shall promptly repair any such legitimate damage claim at its sole expense and within an agreed upon time frame, not to exceed one (1) week, as approved by the Contract Administrator. Upon the request of the CONTRACTOR, the Contract Administrator may grant a time extension. Proof of the need for an extension shall be submitted by the CONTRACTOR.
- F. CONTRACTOR agrees that it is in the best interest of the TOWN that all Residential and Commercial Collection Service be provided on the scheduled Collection Day. Accordingly, missed Collections will normally be collected in accordance with Subsection C above regardless of the reason that the Collection was missed. However, in the event the CONTRACTOR does not address a missed Collection complaint in accordance with Subsection C because it believes such complaint to be without merit, CONTRACTOR shall immediately notify the Contract Administrator in writing. The Contract Administrator will investigate all disputed complaints and render a final and binding decision.

SECTION 18. RECORDKEEPING AND REPORTING

- A. The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." CONTRACTOR acknowledges the public shall have access at all reasonable times to all documents and information pertaining to TOWN'S contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law.
- B. To the extent that CONTRACTOR has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of this Contract, CONTRACTOR shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.
- C. CONTRACTOR agrees to keep and maintain public records required by the TOWN to perform the service in CONTRACTOR'S possession or control in connection with CONTRACTOR'S performance under this Contract and, upon the request from the TOWN'S custodian of public records, to provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the TOWN.
- D. Upon completion of the Contract, CONTRACTOR agrees, at no cost to TOWN, to transfer to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If the CONTRACTOR transfers all public records to the TOWN upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN'S custodian of public records, in a format that is compatible with the information technology system of the TOWN.

- E. CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by TOWN.
- F. The CONTRACTOR shall keep records of the amounts of Residential Solid Waste, Bulk Trash, and Yard Trash disposed; Residential Bulk Trash, Yard Trash, and Recyclable Materials recycled. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.
- G. The CONTRACTOR shall file and keep current with the TOWN all documents and reports required by this Contract. All documents and reports submitted to the TOWN by the CONTRACTOR shall be fully transparent. CONTRACTOR shall provide additional information as requested by the Contract Administrator to comply with such requirement for transparency.
- H. By the date specified in the TOWN-approved Transition Plan, CONTRACTOR shall electronically transmit to the Contract Administrator the completed and current Residential Customer list that has been revised.
- I. Prior to the fifteenth (15th) calendar day of each month, at the close of each quarter, during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall contain the following information:
 - (1) Tonnage of Residential Solid Waste, Residential Bulk Trash and Residential Yard Trash disposed during the previous month. At the Contract Administrator's request, CONTRACTOR shall provide documentation, in the form of scale house tickets, of the tonnage of Residential Solid Waste and Residential Bulk Waste that is disposed each month.
 - (2) Tonnage of Residential Bulk Trash, Residential Yard Trash, and Residential Recyclable Materials recycled during the previous month.
- J. Prior to September 15th of each year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance, performance bond, route schedules and maps.
- K. In addition to any other requirements of this Contract, the CONTRACTOR shall be required to provide statistical and other pertinent information pertaining to Residential Collection Service as may be requested by the TOWN to monitor compliance with this Contract or to comply with the provisions of Section 403, F.S., as amended, other pertinent laws and regulations, or any interlocal agreements the TOWN has or may enter into during the term of this Contract.
- L. The CONTRACTOR shall mark any information it considers confidential, proprietary, or privileged as such and the TOWN will treat such information accordingly as provided for in Chapter 119, Florida Statutes. If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR's duty to provide public records relating to this Contract, CONTRACTOR shall contact the TOWN's custodian of public records, Town Clerk, at (321) 727-7764.

SECTION 19. LIQUIDATED DAMAGES

- A. It is the intent of the TOWN to ensure that the CONTRACTOR provides a quality level of Residential Collection Service. The TOWN and CONTRACTOR acknowledge and agree that it is impossible to precisely determine the amount of damages that would be incurred by the TOWN due to service failures or circumstances described in this Section for which the CONTRACTOR would otherwise be liable. Accordingly, the TOWN has determined terms and amounts of liquidated damages set forth herein, and the parties agree that the liquidated damages are reasonable under the circumstances. Therefore, the following shall constitute liquidated damages, not penalties, that the TOWN may assess against the CONTRACTOR for failing to comply with requirements of this

Contract, time being of the essence. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, such assessed liquidated damages in the following amounts:

- | | | |
|------|--|---|
| (1) | Failure to submit a Transition Plan within thirty (30) days of Contract execution or to revise the Transition Plan within five (5) Work Days of notification by the Contract Administrator without prior approval of the Contract Administrator for such delay in submittal (§4.A) | \$100.00 per day past the due date |
| (2) | Failure to meet the schedule outlined in the TOWN-approved Transition Plan without prior approval of the Contract Administrator for such delay (§4.A) | \$100.00 per incident per day past the due date |
| (3) | Failure or neglect to resolve each valid complaint, including missed Collection, in the timeframe specified (§17) | \$100.00 per each unresolved |
| (4) | Failure to repair damage to public or private property determined caused by the CONTRACTOR or its personnel within the timeframe approved by the Contract Administrator (§17.F) | \$100.00 per incident after the timeframe approved in writing by Contract Administrator |
| (5) | Mixing of materials in violation of §5.D(4) | \$100.00 per occurrence |
| (6) | Failure to comply with hours and days of operation (§5.A(3)) | \$250.00 per occurrence per vehicle |
| (7) | Changing Collection routes without proper notification (§5.K) | \$1,000.00 per incident per day |
| (8) | Failure to distribute Solid Waste Roll Carts by date specified in Transition Plan unless otherwise approved by the Contract Administrator (§6B(2)) | \$100.00 per Roll Cart per day past due date |
| (9) | Failure to repair, replace, exchange, or deliver a Roll Cart within the required timeframe (§6.D) | \$100.00 per Roll Cart |
| (10) | Failure to collect and process Bulk Waste in a manner that enables, at a minimum, recycling of Yard Trash and White Goods (§5.B and §8) | \$100.00 per Residential Service Unit |
| (11) | Failure to deliver all Residential Solid Waste to the Designated Disposal Facility (§9.A) | \$100.00 per incident |
| (12) | Failure to deliver all Residential Recyclable Materials to the Designated MRF (§10.B) | \$100.00 per incident |
| (13) | Failure to have a vehicle operator properly licensed (§13.E) | \$100.00 per vehicle per day |
| (14) | Failure to clean up spillage, leakage, or excessive blowing debris with the timeframe specified after notification by Town (§14.A) | \$100.00 per incident per day |

- (15) Failure to assign scheduled vehicles and equipment on a route day (\$15.A) \$100.00 per vehicle per day
 - (16) Failure to submit to the TOWN all plans, reports, records, or other documents in the time required under the provisions of this Contract, including §20, unless otherwise approved by the Contract Administrator \$250.00 per month
 - (17) Failure or neglect to complete more than 95 percent of a route (number of missed pickups must be less than 5 percent of total customers on that daily route to be considered more than 95 percent complete) on the regularly scheduled Collection Day without justifiable cause (cause that is beyond the control of the CONTRACTOR) or prior approval by the Contract Administrator \$250.00 per incident
- B. The Contract Administrator may assess liquidated damages pursuant to this Section at any time during the term of this Contract. The Contractor Administrator shall notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, within ten (10) Work Days of receipt of written notice, CONTRACTOR shall request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims within five (10) Work Days of such meeting. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

SECTION 20. EMERGENCY SERVICE PROVISIONS

- A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular routes and schedules. Such variance from regular routes and schedule to ensure the safety of the CONTRACTOR's employees and members of the community shall not be unreasonably denied by the TOWN. However, CONTRACTOR shall make its best effort to resume regular Collection service as soon as possible. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular Collection services may be resumed.
- B. The clean-up from some events may require that the CONTRACTOR hire additional equipment, employ additional personnel, dispose of additional solid waste and bulk waste or work existing personnel on overtime hours to clean debris resulting from the event. The CONTRACTOR shall receive additional compensation, per Exhibit 4, above the normal compensation contained in this Contract, to cover documented costs provided the CONTRACTOR has first secured written authorization and approval from the TOWN through the Contract Administrator. The CONTRACTOR shall substantiate such additional costs for labor, equipment, transportation, and/or disposal in writing. The TOWN shall have the right to audit such costs.
- C. The TOWN reserves the right to contract additional hauling contractors for debris removal operations after it is determined by the Contract Administrator that additional services are needed and after notice to the CONTRACTOR for events hurricane, tornado, major storm, natural disaster, or other such event.

SECTION 21. PERFORMANCE BOND

Prior to commencing services, the CONTRACTOR shall furnish to the TOWN, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in the amount of three hundred thousand dollars (\$300,000.00). It shall be executed by a surety company licensed to do business in the State of Florida; having an "A-" or better rating by A. M. Best or Standard and Poor's; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the TOWN.

SECTION 22. INSURANCE

- A. The CONTRACTOR shall provide, pay for, and always maintain in force during the term of this Contract, such insurance, including Worker's Compensation Insurance and comprehensive general liability insurance as stated below. The CONTRACTOR shall also name the TOWN as an additional insured to CONTRACTOR'S comprehensive general liability insurance policy, and shall provide the TOWN with annual Accords documenting both insurance coverages and that the TOWN has been named as an additional insured on the comprehensive general liability insurance policy and as a certificate holder for all other forms of insurance and setting forth the minimum insurance standards set forth below:
- (1) Worker's Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the CONTRACTOR'S employees.
 - (2) Comprehensive General Liability Insurance, including contractual, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit for bodily injury liability and property damage liability. The TOWN is to be included and named as an "additional insured" with respect to any claims arising out of this Contract.
 - (3) Business Automobile Liability Insurance with minimum limits of one million dollars (\$1,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.
- B. UPON EXECUTION OF THIS CONTRACT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF MALABAR IS AN ADDITIONAL NAMED INSURED CERTIFICATE HOLDER, AS APPLICABLE, WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'S WORK UNDER THIS CONTRACT.
- C. The CONTRACTOR shall not commence operations, and/or labor to complete any of the work pursuant to this Contract until certification or proof of insurance issued directly by the insurance company underwriting department or insurance agent, detailing terms and provisions of coverage has been received and approved by the Town.
- D. Insurance policies and coverages shall not be affected by any other policy of insurance which the TOWN may carry in its own name.
- E. CONTRACTOR'S insurance policies shall be endorsed to provide the TOWN with at least thirty (30) calendar days' prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits. Notice shall be sent to:

Town Manager
Town of Malabar

2725 Malabar Road
Malabar, Florida 32950

- F. All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance.
- G. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- H. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which TOWN is named as an additional insured shall not apply to TOWN. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN's actual notice of such event.
- I. If any of CONTRACTOR's initial insurance expires prior to the completion of the term of this Contract, renewal copies of policies shall be furnished to TOWN at least thirty (30) days prior to the date of their expiration, and TOWN shall be an additional named insured by endorsement on all of CONTRACTOR's renewal policies.
- J. The official title of the owner is Town of Malabar. This official title shall be used in all insurance policies and documentation.
- K. Notwithstanding any other provisions of this Contract, CONTRACTOR's obligation to maintain all required insurance as specified in this Section of the Contract shall survive the expiration or earlier termination of this Contract.

SECTION 23. INDEMNIFICATION OF TOWN

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind resulting from the negligent reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor of CONTRACTOR, or any person directly or indirectly employed by CONTRACTOR or any subcontractor of CONTRACTOR to perform or furnish any services, or caused by the breach of this Contract or violation of applicable law in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property.
- B. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsection A, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly

reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days.

- C. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights and responsibilities contained in this Contract.
- D. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 24.
- E. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

SECTION 24. POINT OF CONTACT

The day-to-day dealings between the CONTRACTOR and the TOWN shall be between the CONTRACTOR and the Town M Manager or designee.

SECTION 25. NOTICE

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Town Manager Town of Malabar 2725 Malabar Road Malabar, Florida 32950	and	Town Clerk/Treasure Town of Malabar 2725 Malabar Road Malabar, Florida 32950
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As to the CONTRACTOR:

Division Manager Waste Pro of Florida, Inc. 2954 W. King St. Cocoa, Florida 32926	and	Regional Vice President Waste Pro of Florida, Inc. 3705 St. Johns Parkway Sanford, Florida 32771
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Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Electronic transmission is acceptable notice, effective when received; however, electronic transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted electronically must also be mailed as required herein.

SECTION 26. TERMINATION OF CONTRACT

- A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days' advance written notice, to be served as provided in Section 25, upon the happening of any one of the following events:
- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
 - (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
 - (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
 - (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money due the TOWN to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or
 - (7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide Collection for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4th) Work Day in order to provide interim Contract Collection until such time as the matter is resolved and the

CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN, except to the extent the failure to provide Collection services is the result of the occurrence of an event of force majeure.

- B. Habitual Violations. If the Contractor frequently, regularly, or repetitively fails to comply with its obligations and requirements under this Agreement, The Town may conclude that the Contractor is a "habitual violator." The Town has determined that habitual violations are those administrative charges that cumulatively amount to \$100,000 or more over a 12-month period. If the City concludes the Contractor is a habitual violator, the City shall issue a final warning to the Contractor, citing the grounds for the warning, and any single default by the Contractor within a 6-month period thereafter shall be grounds for immediate termination of this Agreement.
- C. Effective Date of Termination. In the event of the aforesaid events specified in subsections A and B above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The Contractor and its surety on the performance bond, shall be liable for any excess cost for performing such work over the cost to the County if the Contractor had continued to perform in accordance with the Contract.

SECTION 27. MODIFICATIONS TO THE CONTRACT

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make changes in Solid Waste Management legislation and that changes in law may mandate certain changes to this Contract. Should such changes materially alter the obligations of the CONTRACTOR, then the Collection charges established in the Exhibits to this Contract shall be adjusted accordingly. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required. In addition, TOWN and the CONTRACTOR may approve other changes upon mutual agreement to address any other amendments to this contract. If an agreement cannot be reached, this Contract shall terminate upon one hundred and eighty (180) days of a declared impasse by either party.

SECTION 28. PERMITS AND LICENSES

The CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect, and shall, prior to execution of the Contract, provide copies of those permits and licenses to the TOWN, and within fifteen (15) days of receipt, all renewals thereof.

SECTION 29. INDEPENDENCE OF CONTRACT

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the CONTRACTOR as an agent, representative or employee of the TOWN for any purpose whatsoever. The CONTRACTOR is to be, and shall remain, an independent contractor with respect to all services performed under this Contract.

SECTION 30. FORCE MAJEURE

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics,

quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, or federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated.

SECTION 31. EMPLOYEE STATUS

Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TOWN'S officers and employees either by operation of law or by the TOWN.

SECTION 32. EQUAL OPPORTUNITY EMPLOYMENT

CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

CONTRACTOR shall comply with all federal, state and TOWN laws applicable to the CONTRACTOR services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code, The CONTRACTOR is expected to fully comply with all provisions of all laws and the TOWN reserves the right to verify the CONTRACTOR'S compliance with them. Failure to comply with any laws will be grounds for termination of the Contract for cause.

SECTION 33. DISPUTE RESOLUTION

The parties shall endeavor to settle all issues regarding this Agreement by amicable negotiations. Issues that are not amicably settled shall be submitted to non-binding mediation in front of a mutually agreed upon mediator.

- A. Mediation may be commenced by the TOWN or COLLECTOR by the service of a written request for mediation ("Request for Mediation") upon the other party. Such Request for Mediation shall summarize the controversy or claim to be mediated.
- B. The mediation shall be heard in Brevard County before a single mediator.
- C. All attorneys' fees and costs of the mediation shall be borne by the respective party incurring such costs and fees.
- D. If mediation is unsuccessful then the parties are free to file a lawsuit in Brevard County to enforce the provisions herein.
- E. The prevailing party in any litigation to enforce this Agreement, including at all appellate levels shall be entitled to an award of attorney fees.

SECTION 34. SERVICE DURING DISAGREEMENT

During any dispute which arises between the TOWN and the COLLECTOR, in any way relating to this contract, performance, or compensation hereunder, the COLLECTOR shall continue to render full compliance with all terms and conditions of this contract but shall not waive or relinquish any rights by doing so.

The failure of the TOWN at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same, nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

SECTION 35. GOVERNING LAW

The parties agree that this Contract shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 36. CONSENT TO JURISDICTION

The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Contract shall be with the State Courts of Florida, and specifically, the County or Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, depending upon the respective jurisdictional limit. Each party further agrees that venue for any action to enforce this Contract shall be in Brevard County, Florida.

SECTION 37. COMPLIANCE WITH LAWS

The CONTRACTOR shall conduct its operations under this Contract in compliance with all applicable Federal, State, and local laws and regulations.

SECTION 38. SEVERABILITY

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

SECTION 39. ASSIGNMENT AND SUBCONTRACTING

- A. Assignment. No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.
- B. Subcontracting. CONTRACTOR shall not employ subcontractors without the advance written permission of the TOWN. CONTRACTOR shall be fully responsible for the services and work provided by a subcontractor under the terms of this Contract. CONTRACTOR agrees that any employee or agent of the CONTRACTOR and any agent/employee of a subcontractor to the CONTRACTOR shall be removed from the TOWN jobsite or TOWN

premises upon request by the Town Administrator or designee. Such request will only be issued to remove a person if the Town Administrator or designee has a reasonable basis (as determined in his or her discretion) that the presence of such person on TOWN property or at a TOWN jobsite is not in the best interest of the TOWN, or its employees, guests, visitors or citizens.

- C. CONTRACTOR shall not be permitted to alter its contracted name, create a dba, or transfer more than fifty percent (50%) interest in its company without the specific written approval of the TOWN.

SECTION 40. MODIFICATIONS

This Contract constitutes the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

SECTION 41. LEGAL REPRESENTATION

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

SECTION 42. FUND APPROPRIATION

The CONTRACTOR understands and agrees that the TOWN, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Contract shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. CONTRACTOR shall not proceed with services under this Contract without TOWN'S written verification that the funds necessary for CONTRACTOR'S compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The TOWN does not represent that said budget item will be adopted, said determination being the determination of the Town Council at the time of the adoption of the budget.

SECTION 43. PUBLIC ENTITY CRIME

CONTRACTOR understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. CONTRACTOR herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Contract for Residential Collection Service.

SECTION 44. FINANCIAL INTEREST

CONTRACTOR warrants and represents that no elected official, officer, agent, or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director, or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

TOWN OF MALABAR, FLORIDA
A municipal corporation

ATTEST:

By:

Town Manager/Town Clerk

Patrick T. Reilly, Mayor

Date: _____

Date: _____

Approved as to form and correctness:

Karl W. Bohne, Jr
TOWN ATTORNEY

Date: _____

WITNESSES:

WASTE PRO OF FLORIDA, INC.

By:

Print Name: _____

Print Name & Title: _____

Date: _____

Print Name: _____

EXHIBIT 1
RESIDENTIAL AND COMMERCIAL COLLECTION AND DISPOSAL SERVICE RATES

These rates shall be in effect from January 1, 2022, through December 31, 2022. Rates shall be adjusted starting January 1st of each Contract Year thereafter in accordance with Section 11 and 12 herein. An example rate adjustment calculation is provided in Exhibit 2.

Service	Rates per household Per Month	Additional customer requested solid waste carts	Additional customer requested recycling carts
Residential Solid Waste Option 1a – Twice Per Week Collection for Solid Waste & Once Per Week Recycling of multiple size carts provided by Collector. (35,64,96 gallon), Weekly Collection of Unlimited Yard Waste and 12 cubic yards of Bulky/White Goods. Town to reduce Franchise Fee to 5%.	\$43.88	\$1.80/month	\$2.05/month

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: CAN AND CART SERVICE

Service Type	Frequency	Rate per Account per Month
32-gallon can (curbside) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$18.63
	2x weekly	\$24.35
32-gallon can (carryout) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$31.13
	2x weekly	\$36.85
35-gallon cart	1x weekly	\$18.70
	2x weekly	\$24.42
64-gallon cart	1x weekly	\$18.97
	2x weekly	\$24.69
96-gallon cart	1x weekly	\$19.07
	2x weekly	\$24.79

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: BIN SERVICE		
Service Type	Frequency	Rate per Account per Month
2 c.y. bin	1x weekly	\$54.99
	2x weekly	\$109.98
	3x weekly	\$164.97
	4x weekly	\$219.96
	5x weekly	\$274.96
	6x weekly	\$329.95
4 c.y. bin	1x weekly	\$109.98
	2x weekly	\$219.96
	3x weekly	\$329.95
	4x weekly	\$439.93
	5x weekly	\$549.91
	6x weekly	\$659.89
6 c.y. bin	1x weekly	\$164.97
	2x weekly	\$329.95
	3x weekly	\$494.92
	4x weekly	\$659.89
	5x weekly	\$824.87
	6x weekly	\$989.84
8 c.y. bin	1x weekly	\$219.96
	2x weekly	\$439.93
	3x weekly	\$659.89
	4x weekly	\$879.86
	5x weekly	\$1,099.82
	6x weekly	\$1,319.78

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

COMMERCIAL FRONTLOAD COMPACTOR SERVICE		
Service Type	Frequency	Rate per Account per Month
3 c.y.*	1x weekly	\$125.35
	2x weekly	\$250.71
	3x weekly	\$376.06
	4x weekly	\$501.41
	5x weekly	\$626.77
4 c.y.*	1x weekly	\$167.14
	2x weekly	\$334.28
	3x weekly	\$501.41
	4x weekly	\$668.55
	5x weekly	\$835.69
5 c.y.*	1x weekly	\$208.92
	2x weekly	\$417.85
	3x weekly	\$626.77
	4x weekly	\$835.69
	5x weekly	\$1,044.61
6 c.y.*	1x weekly	\$250.71
	2x weekly	\$501.41
	3x weekly	\$752.12
	4x weekly	\$1,002.83
	5x weekly	\$1,253.54
* Plus charge for equipment lease, rental, or purchase.		

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

INDUSTRIAL / C&D ROLLOFF DEBRIS BOX SERVICE	
Service Type	Rate
10 c.y. **	\$355.00 per pull **
15 c.y. **	\$355.00 per pull **
20 c.y. **	\$375.00 per pull **
25 c.y. **	\$395.00 per pull **
30 c.y. **	\$415.00 per pull **
Less than 30 c.y. compactor**	\$415.00 per pull **
30 c.y. - 39 c.y. compactor**	\$435.00 per pull **
Greater than 40 c.y. compactor**	\$435.00 per pull **
** Plus disposal charge.	

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Town of Malabar, Florida
Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

SPECIAL CHARGES		
Special Service	Charge	
Wheel-out service for non-qualifying households	\$26.00	additional per month per hh
On-call bulky waste pick-up for non-qualifying residents	\$30.00	per cubic yard per event
Bulk waste pickup in excess of 12 cy per event	\$30.00	per cubic yard above 12 cy
Refrigerant removal charge, if applicable	TBD	per unit
On-call extra solid waste collection for residential premises.	35-gallon cart:	\$25.00
	64-gallon cart:	\$25.00
	96-gallon cart:	\$25.00
Cart exchange (for requests in addition to 2 x first year free exchange and subsequent 1x annual free exchange; includes delivery).	\$100.00	per event
Call back for collection as a result of set-out after collection time.	\$30.00	per event
Cart replacement as a result of loss or damage through willful or intentional misuse or abuse.	\$70.00	per cart plus exchange fee
Extra Commercial Pick-up:		
32-gallon can	\$25.00	per event
35-gallon cart	\$25.00	per event
64-gallon cart	\$25.00	per event
96-gallon cart	\$25.00	per event
2 c.y. bin	\$55.00	per event
4 c.y. bin	\$55.00	per event
6 c.y. bin	\$55.00	per event
8 c.y. bin	\$55.00	per event
Key charge: Allowed when container access requires driver to remove lock to service the container.	\$15.00	per container per month
Enclosure charge: Allowed when collection requires removing a container from an enclosure and replacing it when empty.	\$15.00	per container per month
Gate service charge: Allowed when collection requires passing through a gate in order to access a container.	\$15.00	per container per month
Distance charge: Allowed when a container is placed further than 10 feet from where the collection vehicle has access.	\$15.00	per fifty (50) feet per container per month
Other: Special Collection Solid Waste	TBD	per issue

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

STORM OPERATIONS	
Special Service	Charge
Rear Load truck and 1 driver	\$225.00 per hour
Additional laborers	\$75.00 per person per hour
Grapple truck and 1 driver	\$225.00 per hour
Rolloff truck / container and 1 driver	\$225.00 per hour

EXHIBIT 2
SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENTS

Service rates are adjusted as defined and described in Sections 12 and 13 of this Contract and as illustrated in this Exhibit. All assumptions are for demonstration purposes only. Assumptions (for demonstration purposes only):

- CPI February 2020 = 243.283
 CPI February 2021 = 247.126
 100% of percentage change in CPI = $100\% \times ((247.126 - 243.283) / 243.283) = 0.01264 = 1.26\%$
- Average of monthly Fuel Index prices for March 2016-February 2017 = 2.56375
 Average of monthly Fuel Index prices for March 2017-February 2018 = 2.65231
 Percentage change in Fuel Index = $(2.65231 - 2.56375) / 2.56375 = 0.034543 = 3.45\%$

Residential Service Rate	a	b	c	d	e	f	g
	Rates for Demonstration Purposes Only (\$/unit/month)	95% of Collection Element	CPI 100% of % Change	5% of Collection Element	Fuel Index (% Change)	New Rate (\$/unit/month)	Formula
COLLECTION ELEMENTS	\$/unit/month					\$/unit/month	
Solid Waste Collection	\$12.94	\$12.29	1.26%	\$0.65	3.45%	\$13.12	$f = a + (b \times c) + (d \times e)$
Bulk Waste Collection	\$11.83	\$11.24	1.26%	\$0.59	3.45%	\$11.99	$f = a + (b \times c) + (d \times e)$
Recycling Collection	\$3.32	\$3.15	1.26%	\$0.17	3.45%	\$3.37	$f = a + (b \times c) + (d \times e)$
	\$28.09					\$28.47	
DISPOSAL ELEMENTS	See Calculations Below (\$/unit/month)					\$/unit/month	
Bulk Waste Disposal	\$12.12	na	1.26%	na	na	\$12.27	$f = a + (b \times c)$
Solid Waste Disposal	\$4.77	Adjusted only when actual tip fee changes				\$4.77	na
TOTAL	\$44.98					\$45.51	

**EXHIBIT 3
 TECHNICAL SPECIFICATIONS FOR ROLL CARTS**

Following are minimum requirements for Solid Waste and Recyclables Roll Carts as required within the scope of this Contract. CONTRACTOR must provide a prototype of each of the TOWN's program-sized Roll Carts (Solid Waste and Recycling) that meet the following technical specifications for TOWN approval prior to ordering the TOWN's Roll Carts. The TOWN reserves the right to waive the requirement of a prototype.

<p>Construction and Design</p>	<ul style="list-style-type: none"> • Must meet ANSI Standards Z245.30 and AZ245.60 "Type B/G" containers, all rules, regulations, and laws pertaining to this product. • Roll Carts must be produced by a major manufacturer. • The upper lift point shall be permanently molded into the Roll Cart and the lower must be a 1" diameter galvanized free floating metal bar or composite equivalent, securely attached to prevent failure or loss. Molded bars are unacceptable. • The Roll Cart must be manufactured with a narrow width design to fit through a 30" door opening.
<p>Size (Capacity)</p>	<ul style="list-style-type: none"> • Three different sized Roll Carts are required with the following capacities: <ul style="list-style-type: none"> ○ Large = 94-96 gallon ○ Medium = 64-66 gallon ○ Small = 32-36 gallon
<p>Materials</p>	<ul style="list-style-type: none"> • Must be rotationally or injection molded using medium to high density 100% recyclable polyethylene. • Minimum resin weight of unassembled Roll Cart, including cart body and lid, must be: <ul style="list-style-type: none"> ○ 30 pounds or greater for large Roll Cart ○ 22 pounds or greater for medium Roll Cart • Resin used in the manufacturing process must contain a minimum of 25% post-consumer recycled material. • All plastic parts must be stabilized against ultraviolet light deterioration with a UV stabilizer additive.
<p>Body</p>	<ul style="list-style-type: none"> • The body of the Roll Cart must be one piece. • The Roll Cart wall and bottom thickness must be a minimum of .150 inches. • The body of the Roll Cart must be designed with a drag rail on the container bottom and reinforced in the area that contacts the ground with a molded-in bottom wear strip. • The top of the body must be molded with a reinforced rim to add structural strength and stability to the container and to provide a flat surface for lid closure. This reinforced rim must have a raised inner perimeter. The rim of the Roll Cart must not be designed to have an inward radius to obstruct free flow emptying the material out of the container.
<p>Lid</p>	<ul style="list-style-type: none"> • Lids must be of a configuration that the lid will not warp, bend, slump, or distort to such an extent that it no longer fits the body properly or becomes otherwise unserviceable.

	<ul style="list-style-type: none"> • The lid must be one-piece construction and securely attached to the rear of the wheeled section of the Roll Cart using a rustproof, weather-resistant fastener system. • The lid must be hinged to open to a position of 270 degrees from the closed position and hang open without stressing the lid, body, or tipping over the Roll Cart. • Lids must be designed to be easily removed in the event of damage or failure. Lid latches are not acceptable.
Handle	<ul style="list-style-type: none"> • Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the Roll Cart. • The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.
Wheels/Axle	<ul style="list-style-type: none"> • Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered. • Wheels shall be snap-on or attached in a way that prevents unintended detachment. • Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts. • Each Roll Cart shall be furnished with a minimum 5/8 inch diameter axle with a corrosion-resistant coating that must be securely attached to the body by molded axle retainers. • The wheels and axle must be rated to meet the maximum load requirements of 3.5 pounds per gallon.
Stability	<ul style="list-style-type: none"> • Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.
Color	<ul style="list-style-type: none"> • Color must not be streaked in the finished product and must be colorfast so that the color does not alter significantly with normal use. Painted Roll Carts are unacceptable.
Warranty	<ul style="list-style-type: none"> • Roll Carts must be fully (100%) warranted against defects in materials and workmanship. • Warranty is understood to include the following coverage: <ul style="list-style-type: none"> ○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body. ○ Damage to the body, the lid, or any component parts through opening or closing the lid. ○ Failure of the lid hinge to remain fully functional and continually hold lid in the originally-designed and intended positions when either opened or closed. ○ Failure of the body and lid to maintain its original shape. ○ Wear through of Roll Cart bottom so that it leaks liquid. ○ Failure of the wheels to provide continuous, easy mobility, as originally designed. ○ Failure of any part to conform to minimum standards as specified.

Exhibit 4

Disaster Cleanup Agreement

Storm Operations

Pre-Storm

- On an annual basis Contractor will be available to meet with the Town, prior to the traditional hurricane season to discuss readiness plans.
- Contractor subscribes to the Brevard County Emergency Management notification system. The VCEM provides information on all potentially hazardous/severe weather events. If the Town, Brevard County, the State of Florida or the United States Federal government declare an impending or actual emergency, Contractor will contact the Town to coordinate any needed services.

During Storm – Normal collection operations will be suspended upon direction of governmental officials or when sustained winds have forced the closure of any bridges to the Town. During the actual storm, operations will cease and will only resume when it is safe to operate.

Post Storm - Operational hours during the first 72 hours after a storm or disaster event will be up to 12 hours per day and work will commence as soon as it is safe to deploy work crews and at the Town's direction. The scope of service available in the first 72 hours will be dependent on personnel and equipment availability.

Additional work – Any work over and above normal activity is likely to affect collection services. The Contractor will be compensated for any additional labor and disposal expenses incurred as a result of performing the additional work. Hours to be paid will be any additional hours worked over normal route time. Normal route time is defined as the average number of hours the Contractor runs over the same calendar month, over a 3-year period, not to include any period affected by a storm event. In the event there is not 3 years of operational data available the Town and Contractor will develop an estimate of operations time to be used to determine any extra work. The Town recognizes that operations may be performed on the normal solid waste and yard waste collection days or throughout the normal work week if equipment and personnel are available.

Pricing

Post Storm Operations – TBD Fleet

- Charges will be:
 - Rear load truck and (1) man crew \$ 225.00 per hour
 - Additional laborers \$ 75.00 per hour
 - Grapple truck and (1) driver \$ 225.00 per hour
 - Roll off truck/container with (1) driver \$ 225.00 per hour

- Contractor will cooperate with the Town's monitoring contractor to provide documentation of all work activities.
- Billing for storm debris removal service will be on a weekly basis with payment within 30 days of invoice date.
- Disposal charges will be billed to the Town.
- Pricing is subject to annual CPI adjustments, or the CONTRACTOR shall provide the TOWN with a separate disaster cleanup agreement with specified rates at the commencement of each Contract Year.

Post Storm Operations - Extraordinary Services

- In the event the Town needs additional storm debris removal assistance, Contractor will cooperate with the Town to locate and provide sub-contracted storm debris removal services.
- Pricing will be obtained at the time of the event and Contractor will cooperate with the Town to secure the lowest available pricing possible.
- Billing for Extraordinary Services will be on a weekly basis with payment within 30 days of invoice date.
- Disposal charges will be billed to the Town.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.a.
Meeting Date: February 07, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Resident Request for Exception to the Fence Height limit in RR-65 due to special circumstances

BACKGROUND/HISTORY:

This resident has submitted Agenda Request and may not be present for the meeting. She is requesting the Town Council approve an exception to the restriction in Article V of the Code that limits privacy fences to six feet in RR-65 zoning.

She is requesting approval to build an eight (8) feet high privacy fence on the south side of her property to screen the view from the adjacent property.

Article V of the Code does limit the height to six feet but also allows for entrance gates to be eight (8) feet in height.

Staff advised her to seek a special exception from Council.

ATTACHMENTS:

- Agenda Request form and explanation
- Portion of Article V

ACTION OPTIONS:

Council Action and Direction to Staff



**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please mail completed form to:

JAN 10 2022 AM 10:45 *

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Jennifer Doyle

ADDRESS: 2280 Duncil Ln
Malabar FL 32950

TELEPHONE: (321) 750-2292
(Home) (Business)

Please state the item you wish to have placed on the Town Council Agenda.

Request for 8ft privacy fencing south side of property at 2280 Duncil Ln (important info attached and previously emailed)

Please summarize pertinent information concerning your requested Agenda item and attach applicable documents.

Letter attached states more detail as to why requesting such matter differently

Please state desired action by Town Council.

Desired request is an approval to better the current environment between two properties and benefiting both owners

Signed: Jennifer Doyle

Date: 01/10/2022

Letter to attach to agenda / Jennifer Doyle

Jennifer Doyle <jendoyle2014@gmail.com>

Mon 1/10/2022 10:02 AM

To: Debby Franklin <townclerk@townofmalabar.org>

JAN 10 2022 AM 11:38 *

Dear Town Council

Please Note this will be provided on behalf of my physical presence and will be emailed to my district 5 Rep, Mayor, Manager for reference to agenda request. Which will be dropped off at town hall 1/10/2022 a addt'l copy will also be provided with agenda form so all council is aware.

My name is Jennifer Doyle I have been a resident of Malabar since 2011 first as a renter then as a home owner after falling in love with this town. I currently reside at 2280 Duncil Ln in Malabar. I am a Disabled Army Veteran and spend most time home in the accompany of my farms and children and spouse. I'm writing this attachment to go with my agenda request as I have severe anxiety amongst strangers rendering me at times inaudible or making sense.

My Agenda request is for an 8 foot fence for only the south side of my property from house back. I know this request is generally put on a variance request but after consulting with town office member this was recommended due to circumstances.

anything else. So after all this information to state my case I am requesting a approval for an 8ft fence on my south side through agenda request

1. Because I do not have \$800 to throw at a possibility of a variance approval
2. My 8yrs olds bedroom window is within his 6ft posted ring camera 15ft from property line view

3. To block him from intimidating and staring at my children or my guests on my property which has been witnessed by a deputy friend.
4. To control any complaints of my dog barking at him (animals are great judges of character)
5. His home is two stories built years after mine sitting at higher elevation and is set so far back he is in my whole back yard.
6. The fence at that height of 8ft will not hinder on him or his safety as his driveways design is so long it will not block any view of safely leaving his property or us leaving ours being that the fence request is from the even of my house.

I ask you to please consider this so I may get a company to come install the fence as quickly as possible so that myself and my children and guests may enjoy our home once again without intimidation and or fear as we can not afford to move currently.

I apologize for being long winded but I strive to be as transparent as possible

Thank you
Jennifer Doyle
2280 Duncil Ln
Malabar FL 32950
(321)750-2292

OFFICE OF THE TOWN CLERK
(321) 727-7764
FAX (321) 722-2234



FEB 2 2022 PM 4:45
2725 MALABAR ROAD
MALABAR, FLORIDA 32950-4427

Agenda 11.b.

**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Linda Walker
ADDRESS: 2575 Walker Lane
Malabar Fl 32950
TELEPHONE: 321 261 7111
(Home) (Business)

Please state the item you wish to have placed on the Town Council Agenda.

maintainance of Walker Lane , by the town of Malabar. It is used regularly on a daily basis, by residents of 5 homes, including the corner home also part of Atz Rd. The potholes which are now a part of this Lane, are not only extremely deep, but very dangerous, to walkers, bikers, motorcyclists

Please summarize pertinent information concerning your requested Agenda item and attach applicable documents.

and drivers of vehicles. should an accident occur due to the terrible condition of this particular lane, here in Malabar, one could consider that the person involved in such an accident would not possible go to court. Linda has been a resident of Malabar for ⁴³ yrs. , has always paid her taxes , and would like reasons why this well travelled lane has not been attended to on a regular basis like every other Malabar road has, even newer ones.

Please state desired action by Town Council.

To keep Walker Lane in good condition like all of the other roads that all of those other Malabar tax payers are also getting as well.

Signed: Linda Walker

Date: 2-2-22

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.
Meeting Date: February 07, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Resolution Opposing HB 531 (Reso 02-2022)

BACKGROUND/HISTORY:

This House Bill has already passed many committee meetings. I have attached the contents of the Bill as back-up to the resolution for your consideration.

ATTACHMENTS:

- Reso 02-2022 opposing HB 531
- HB 531

ACTION OPTIONS:

Action on Reso 02-2022

RESOLUTION 02-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA OPPOSING HOUSE BILL 531 WHICH WOULD REQUIRE ALL LOCAL ELECTIONS TO DESIGNATE THE POLITICAL PARTY EACH CANDIDATE BELONGS TO IN THEIR SIGNAGE AND ON THE BALLOT; BILL WOULD ALSO RESTRICT VOTERS TO ONLY VOTE FOR THE ONE SCHOOL BOARD CANDIDATE THAT REPRESENTS THEIR DISTRICT AND NO LONGER ALLOW VOTERS TO VOTE FOR ALL DISTRICT CANDIDATES FOR SCHOOL BOARD; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION TO THE BREVARD LEGISLATIVE DELEGATION, THE FLORIDA LEAGUE OF CITIES, THE PRESIDENT OF THE SENATE, SPEAKER OF THE HOUSE AND THE GOVERNOR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar, like 411 other municipalities, enjoy Home Rule authority under the 1968 Constitutional revision adopted by the voters of Florida: and

WHEREAS, this Home Rule authority was formally adopted by the Florida Legislature in 1973 as the Home Rule Powers Act of 1973 and provides local government to regulate and govern their municipalities in the manner best suited for each locale.

WHEREAS, the Florida Constitution states in Article VIII, Section 2(b) for municipalities:

"Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise power for municipal purposes except as otherwise provided by law."

WHEREAS, the proposed House Bill (HB) 531 would encourage political proponents to interfere in local governance by injecting politics into the day to day operations of local municipalities.

WHEREAS, HB 531 would also encourage outsider involvement and contributions by political parties with no direct positive impact on how the municipality is governed.

WHEREAS, HB 531 would restrict our voting rights by allowing voters to only vote for the one School Board Member instead of all of them that have a direct personal impact on how our children's education is provided.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. The Town of Malabar Council states that the "Whereas" statements above are true and correct and oppose the proposed HB 531 as it will further corrode the ability to govern locally without outside political involvement and reduce voters rights to vote for all the School Board members whose decisions affect our children's education.

SECTION 2. The Town of Malabar Council encourages of local municipalities to communicate to the State that local regulations are best determined by local governments without political party involvement.

SECTION 3. The Town Council of Malabar directs the Town Clerk to forward copies of this resolution to each member of the Brevard County Legislative Delegation, the Senate

President, the Speaker of the House; the Florida League of Cities; the Space Coast League of Cities, and to all Brevard County municipalities.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

This Resolution was moved for adoption by Council Member _____. This motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva
Council Member Brian Vail
Council Member Steve Rivet
Council Member David Scardino
Council Member Mary Hofmeister

This resolution was then declared to be duly adopted this 7th day of February 2022.

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

APPROVED FOR LEGAL SUFFICIENCY:

Karl Bohne, Jr., Town Attorney

1 A bill to be entitled
 2 An act relating to Brevard County; providing an
 3 exception to general law; requiring the Brevard County
 4 Supervisor of Elections to print the party designation
 5 on ballots for all candidates for all elections;
 6 providing an exception; providing that only qualified
 7 electors of the district, ward, precinct, or other
 8 geographical designation are eligible to vote in
 9 certain elections; providing legislative intent;
 10 providing applicability; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. (1) Notwithstanding any other state law to the
 15 contrary, the Brevard County Supervisor of Elections shall print
 16 on the ballot the party designation for all candidates for all
 17 elections except for school board or judicial elections.

18 (2) Notwithstanding any other law to the contrary, for any
 19 government unit in Brevard County that provides for the election
 20 of members by district, ward, precinct, or other geographical
 21 designation, only those voters who are qualified electors of the
 22 district, ward, precinct, or other geographical designation are
 23 eligible to vote for that candidate in the relevant primary,
 24 general, runoff, or other election. It is the express intent of
 25 the Legislature for each member of the board of the Brevard

26 County School District to be elected only by vote of the
 27 qualified electors in that member's individual district and not
 28 by general vote of all electors in the county as required by s.
 29 1001.361, Florida Statutes, or any successor statute.

30 (3) This act applies to all Brevard County elections held
 31 on or after January 1, 2022.

32 Section 2. This act shall take effect July 1, 2022.

TOWN OF MALABAR

Town Council

AGENDA ITEM NO: 12.b
Meeting Date: February 7th, 2022

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: T&GC Request for Council Endorsement of their proposed amendments to the Malabar Scrub Restoration Plan for submittal at Brevard County Commission Meeting of February 8, 2022

BACKGROUND/HISTORY:

- a) On February 2, 2022, Trails and Greenways Committee Chair Drew Thompson provided Staff with an updated plan for Malabar Scrub Sanctuary. The presentation was briefly discussed at the 02/02/2022 Special Town Council Meeting and is here for further discussion/possible action.

FINANCIAL IMPACT:

- a. None

ATTACHMENTS:

- a. Updated Requested Changes to the Environmentally Endangered Lands Program Malabar Scrub Sanctuary Restoration Plan

ACTION OPTIONS:

- a. Motion to endorse this plan as the official Town of Malabar proposal for this project, to be presented to County Commission at 2/8/2022 Meeting.

**Town of Malabar
Requested Changes to the
Environmentally Endangered Lands Program
Malabar Scrub Sanctuary Restoration Plan**

Provided to Town of Malabar Town Council

February 2, 2022

2 Months Into the Issue

We are now at two months of intense public focus regarding the Environmentally Endangered Lands Program (EEL Pgm) Malabar Scrub Sanctuary (MSS) Restoration Plan. Realities considered beyond factors presented in the original plan show the need for some plan modifications. Physical site constraints and current level of passive recreation use were recognized and newly considered after almost 30 years without EEL Pgm full scale restoration.

Differing Views of Appropriateness of Severity of Planned Tree Reduction

EEL Pgm and Brevard County Commissioners (BCC) feel that 500 acres of the 577-acre MSS should have drastic tree reduction to create more habitat for Florida Scrub-Jays. Citizens who use MSS feel that the EEL Pgm should be guided more by the last voter-approved 2004 Referendum ballot wording which said the 20-year / \$60 M bond issue taxation would be for: “protection of habitat, public open space, and water resources, and for providing passive recreational opportunities”. Essentially a problem of imbalance was fully defined and reasonable steps toward a more balanced plan revision have been developed. This file contains the results of that effort.

Town of Malabar Trails & Greenways Committee Asked to Research Issue and Recommend Changes Identifying Tree Preservation Locations & Counts

The Town Council of the Town of Malabar (TOM) asked the Town's all-volunteer Trails and Greenways Committee (T&GC) to develop a comprehensive package of tree preservation locations within the targeted tree reduction zones of the EEL Pgm MSS Restoration Plan. Few, if any, residents of Malabar desire the removal of any trees from MSS. However, the T&GC respected the Management Selection Committee (SMC) science of, and behind, the EEL Pgm plan. The T&GC acknowledged that to help Florida Scrub-Jays, thousands of trees would need to be removed. The T&GC sought to identify which of the trees most valued by MSS users could be retained with a no to minimal impact to the goal of creating optimal habitat for Scrub-Jays in the 500 targeted tree reduction acres of the 577- acre sanctuary.

2 Months of Extensive Research

During the two months that followed the posting of signs first announcing the EEL Pgm MSS Restoration Plan, the members of the TOM T&GC attended, viewed, and/or participated in all respective meetings or webinars where the plans were presented or discussed. The plight of the Florida Scrub-Jay and factors of optimal scrub habitat for Scrub-Jay survival in Brevard County were learned. Additionally, the MSS specific factors of geography, topography, existing habitats that cannot be restored to scrub, and the passive recreation use of the MSS were all studied by the T&GC.

What is Optimal Scrub-Jay Habitat?

In all documentation it was emphasized that Scrub-Jays are vulnerable to predator birds and therefore do best in areas without many trees of height from which predator birds could perch and hunt. The T&GC found that the most succinct source for factors of optimal Scrub-Jay habitat was a chart found at: Florida Fish and Wildlife Conservation Commission - Policy, Position Statement, or Guideline (PPG) - TYPE OF PPG: GUIDELINE – Scrub Management Guidelines – Page 7 of 51.

Table 1. Optimal and suitable Florida scrub-jay habitat characteristics per territory. Adapted from Breininger (2004), Breininger et al. (1998, 2014) and, Burgman et al. (2001).

Habitat variable	Optimal habitat for scrub-jays (i.e., recruitment exceeds mortality)	Suitable scrub-jay habitat (i.e., scrub-jays can persist, at least for the short-term)
Vegetation height	Sufficient amount of medium-height (4 - 5.5 ft tall) shrubs are present to provide cover and produce acorns for scrub-jays. Optimal arrangement of shrub heights within each potential territory includes conditions where: <ul style="list-style-type: none"> • at least 10% of the territory is medium height • most of the vegetation is medium height or shorter • no more than 1 acre of vegetation taller than 5.5 ft per 25 acres is present 	Shrub height averages greater than 3.5 ft but less than 8 ft tall
Open ground	10 - 50% bare sand or sparse herbaceous vegetation.	Minimum: At least some bare sand or sparse herbaceous vegetation. Maximum: No more than 75% bare ground. At least 25% of the territory contains shrubs that provide escape cover, nest sites, and acorns.
Overstory (>15 ft tall) density	0 - 1 tree per acre.	0 - 2 trees per acre (D. R. Breininger, InoMedic Health Applications, pers. comm.).
Distance to forest edge	1,000 ft non-forested buffer (0 - 2 trees/acre) between a scrub-jay territory and forest.	At least a 300 ft non-forested buffer (0 - 4 trees/acre) between a scrub-jay territory and forest.

Florida Scrub-Jay Optimal vs Suitable
Habitat Chart-20190225_FLFWCC

Scrub-Jay Habitat Goals for MSS

From numerous scientific studies, available EEL Pgm documentation, along with specifics of the EEL Pgm MSS Restoration Plan, it became clear that the best chance for survival of Florida Scrub-Jays in MSS required that their habitat would need to meet certain metrics:

the location must have only 1 -2 trees of 15' or higher per acre

the scrub consists of scrub-oak and other native scrub vegetation that is limited to 4' – 5.5' high

the open ground (no vegetation) runs from 10 – 50% of the area

Possibly the Main Factor in Scrub-Jay Habitat... Distance from Tall Trees of Nearby Forest

An important additional factor, again directly related to the acknowledged vulnerability of Scrub-Jays to predator birds, is the tree-free distance from Scrub-Jay territory (areas with most Scrub-Jays) to the nearest forest edge. Optimal distance was noted as 1,000' and the minimal distance considered suitable for Scrub-Jays is 300'. The T&GC noted that, from several perspectives, MSS is too small for the 1,000' optimal standard to be applied throughout the EEL Pgm plan. MSS is actually two sanctuaries – East and West – separated by the 100-acre Cameron Preserve, managed by TOM.

Malabar Scrub Sanctuary – West Characteristics

MSS West is shaped like a lower case “r” and contains the TOM 100’ unpaved right-of-way of Briar Creek Blvd. and the Channel C tributary of Turkey Creek. The sanctuary border is more irregular, with several abrupt corners based on original land acquisition parcels. “Rounding-out” of such corners, by retaining more trees closer to the corner apex, would have minimal negative impact on the tree-free distance to the Scrub-Jay territory located more toward the middle of the sanctuary.

Malabar Scrub Sanctuary – East Characteristics

MSS East is somewhat square-shaped. In seeking optimal Scrub-Jay habitat, this allows for greater tree-free distance to the nearest forest edge. However, MSS East does contain several wetland areas and also has an active Bald Eagle nest which requires establishment of a 600' no reduction zone around the nest. MSS East also has a very popular pond surrounded by trees. It is a major visitation site and highlight of the passive recreation attributes of MSS. Fortunately, the pond is located near a corner of the sanctuary.

Malabar Scrub Sanctuary Keeping Changes Within the 1 – 2 Trees 15'+ Per Acre EEL Pgm Requirement

The T&GC developed a plan, with specific tree preservation locations identified separately in MSS West and East. Careful consideration was made to only request preservation of the most key trees of the sanctuary, with most preservation locations situated along the sanctuary borders. The EEL Pgm MSS Restoration Plan specified tree metric of 1 -2 trees of 15' or higher per acre was maintained. **At 500 of the sanctuary's 577 acres targeted for tree reduction, with no changes, the plan would preserve 1000 trees. With adoption of the T&GC requested preservation locations, the plan would still preserve 1000 trees.** The chart on the next page shows requested tree preservation locations, as individually explained on subsequent pages, and includes the number of trees and acres involved for each preservation location.

Requested Tree Preservation Locations in MSS

At EEL Pgm MSS home page, EEL Pgm states total MSS acreage at 577						577		Target Area Trees to be
In the EEL Pgm Workplan - Attachment B, the targeted restoration acreage total is 500						500		1000
Per EEL Pgm SMC Meeting - MSS to be based on 1-2 trees per acre						2		
EEL Pgm Restoration Target Area Totals				1000				
TOM Preservation Area Totals						500		
MSS Side	Preservation Location	Preservation Trees	Preservation Acres	Preservation Trees Running Totals	Preservation Acres Running Totals	Main Restoraton Area Tree Running Totals	Main Restoraton Area Acres Running Totals	Main Restoraton Area Running Trees Per Acre Totals
West	A	40	3	40	3	960	497	1.9
West	B	30	3	70	6	930	494	1.9
West	C	40	4	110	10	890	490	1.8
West	D	12	1	122	11	878	489	1.8
West	E	0	0	122	11	878	489	1.8
East	A	25	1	147	12	853	488	1.7
East	B	30	2	177	14	823	486	1.7
East	C	40	4	217	18	783	482	1.6
East	D	20	2	237	20	763	480	1.6
East	E	50	5	287	25	713	475	1.5
East	F	100	8	387	33	613	467	1.3

The T&GC Process and Specific Tree Preservation Recommendations

MSS East is somewhat square-shaped. In seeking optimal Scrub-Jay habitat, this allows for greater tree-free distance to the nearest forest edge. However, MSS East does contain several wetland areas and also has an active Bald Eagle nest which requires establishment of a 600' no reduction zone around the nest. MSS East also has a very popular pond surrounded by trees. It is a major visitation site and highlight of the passive recreation attributes of MSS. Fortunately, the pond is located near a corner of the sanctuary.

Trail Compromise Undated Post EELp SMC 1/21/2022

Town of Malabar Trails and Greenways Committee is proposing this compromise for restoration of Malabar East and West, with the goal of:

To the largest extent possible, allow the EELp to continue to manage the property for their overall environmental goals, and

Maintain the best trail user experience possible, and

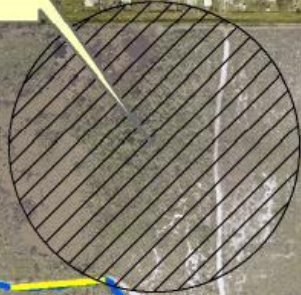
Address immediately adjacent homeowner concerns where possible

Compromise was modified after hearing concerns of SMC on 1/21/2022

EELs Restoration and Trail Map



660ft Buffer around eagle nest tree during timber removal



MAP Legend – From EEL Pgm MSS Restoration Plan

Shaded area = Restoration project Boundary. Restoration will include pine tree thinning to achieve approximately 1 to 2 pine trees per acre; reducing cabbage palm density and reducing scrub vegetation height to less than 6ft.

Blue line = Existing trail

Red line = Areas along trail with a greater overstory where larger oak trees and cabbage palms will be removed and pine trees will be thinned to a greater spacing. Oaks and pine trees with flagging tape will remain standing.

Yellow line = Areas along trail with less overstory and tree removal will be minimal.

*Portions of trails may be closed temporarily for safety reasons during the restoration project.

Malabar West

- The next two pages discuss Malabar West, and the distances to “screening trees”
- The EEL Pgm has identified a goal of maintaining 1000’ to any screens of trees, to help promote more optimal scrub habitat
- Several sources quote 136M (~450’), so the T&GC also analyzed MSS at 500’
- In most areas, screening trees occur already at the entire property boundaries, so an analysis was done by “projecting” the property boundaries toward the property interior to see the effect of these screening trees on potentially “optimal habitat” areas - see the effects of 1000’ and 500’ offsets

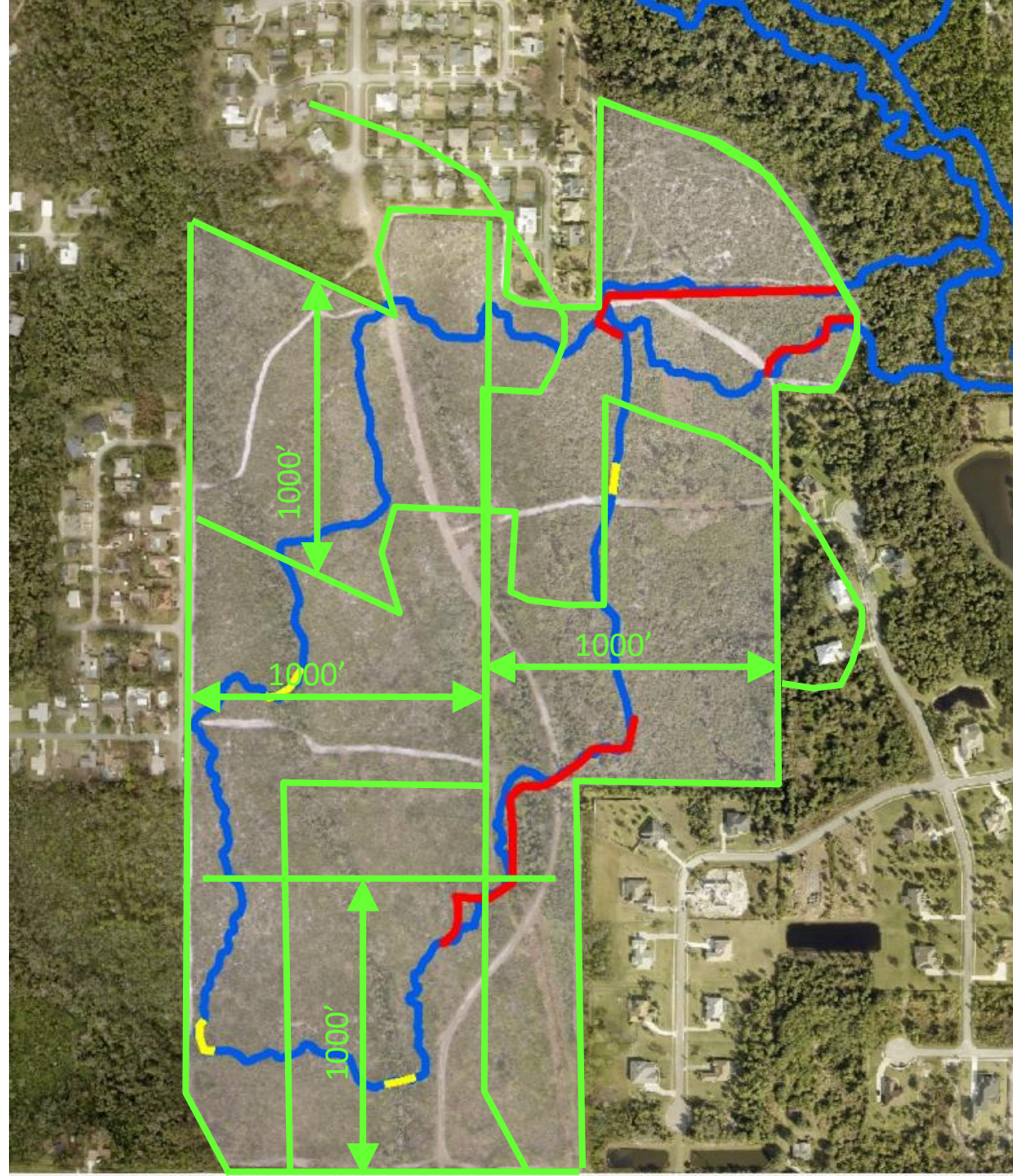
Malabar West “1000 Feet to Screening Trees” Analysis

Green Arrow on Map
Represents 1000' to
property boundaries and/or
tall trees

1000'

Projection of each property
boundary by 1000' shows total
overlap. This property has 0
area that meets the “optimal”
Condition.

The 1000' distance to screening
trees cannot be met at Malabar
West



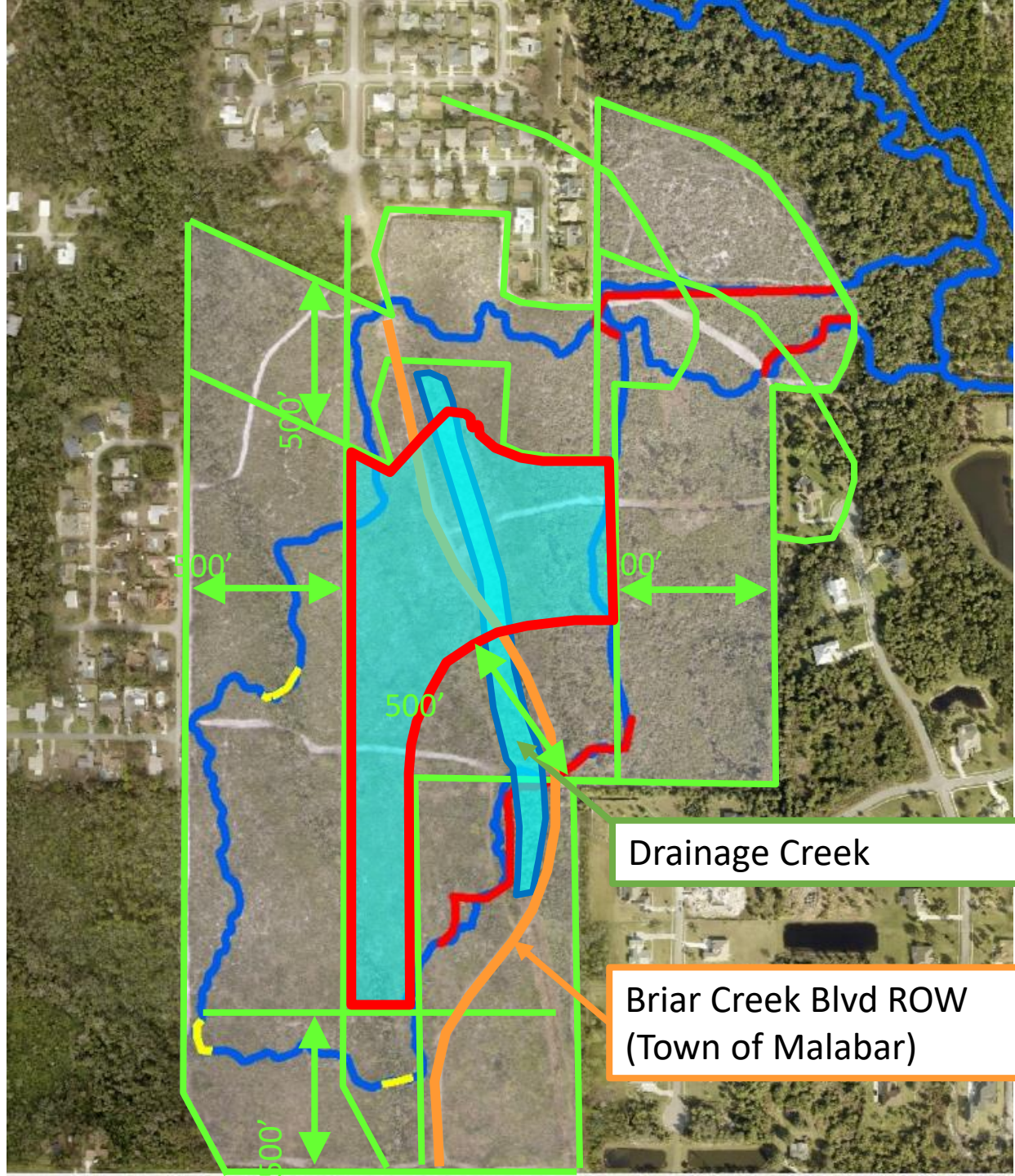
Malabar West "500 Feet to Screening Trees" Analysis

Green Arrow on Map
Represents 500' to property
boundaries and/or tall trees

Projection of each property
boundary by 500' shows a small
area in the property center that
could be optimized

NO trail important tree areas are
inside this optimizable zone

NOTE: Malabar ROW for Briar
Creek Blvd (100' wide, property
of Town of Malabar), and creek
that feeds directly to the S fork of
Turkey Creek



Conclusion of 1000' and 500' Analysis on Malabar West...

Malabar West is too small and complex in shape, and not appropriate to “optimize” scrub habitat based on the “screens of trees” criteria

Observations of 1000' & 500' Analysis on Malabar West...

- **1000' analysis: Zero property left**
- **500' analysis: Small, complex area dominated by Malabar-owned right-of-way (ROW) and Turkey Creek channel tributary creek**
- **Optimizable area is not a critical trail area**
- **Note: Assuming the EEL program should seek specific permission from the Town of Malabar to modify Town of Malabar owned property ROW**
- **The ROW is 100' wide and goes throughout the center of the property. Gates on both ends were built by, and are owned by, Malabar. Most tall trees were removed from the ROW during the 2014 restoration efforts**
- **Note: This ROW was damaged in the last restoration, requiring some repair from the TOM. Town ROW should be restored to the satisfaction of TOM**
- **Note: The creek that runs through this property directly feeds Turkey Creek channel D and the Indian River Lagoon and is a critical drainage for the Town of Malabar**
- **The Town of Malabar maintains this drainage (example: replaced the drainage pipes that cross under Briar Creek Blvd. in 2015)**

- **There is already an established trail compromise here between EEL Pgm and TOM. TOM proposes to build on that compromise while also recognizing that the EEL Pgm wishes to have overall fewer “screening” trees of greater than 15’. Within Malabar West, in general:**
 - **Maintain consideration of the “Trail Buffer” that is +/- 25’ of the trail (perform less severe mechanical reduction)**
 - **Within the Trail Buffer, remove all sand pines, remove taller pine trees as necessary, and remove scrub oaks greater than 12’ except for the areas specifically delineated, keeping all scrub oaks less than 12’**
 - **The plan calls for tree reduction to 1 – 2 trees of 15’ or greater height per acre**
 - **It has been observed that EEL Pgm typically roller chops or mows scrub oaks down to 4-6’. TOM requests that less severe tree reduction be done near the trails.**
 - **Outside of the trail buffer, manage the property as you see fit, with the exceptions of:**
 - **Specifically delineated areas noted on the next pages**
 - **Some trail modifications are suggested, as a “win-win” scenario, with the goal of both advancing the EEL Pgm environmental goals and enhancing the trail users’ experience**
 - **There is some precedence for this. When the State of Florida Forestry did a major restoration on the Cross Florida Greenway, it started out with a “trail optimization” effort, to move trails away from prime scrub to areas where the land managers were more willing to leave more woods and taller overstory. References can be provided from TOM via T&GC.**

- **Malabar West has an important drainage channel that directly feeds the south fork of Turkey Creek, and the Indian River Lagoon.**
- **The TOM expects to see SJRWMD rule compliance by EEL Pgm for these waterways (25' buffer average and 15' buffer minimum) strictly maintained**
- **It should be recognized that this is a different habitat**
- **Overstory removal of the creek should be minimal and not impact the creek**
- **It was observed by TOM that in EEL Pgm Tree removal within the Jordan Scrub Sanctuary, at the lake edges, Brontosaurus vegetation removal was severe, and trees were pushed into the lake, additionally, the lake edges were totally reduced with the grinder (see next page). This type of reduction is not acceptable along a Turkey Creek tributary**



Point of Reference for MSS Work... Edge of Lake in Jordan Scrub Sanctuary

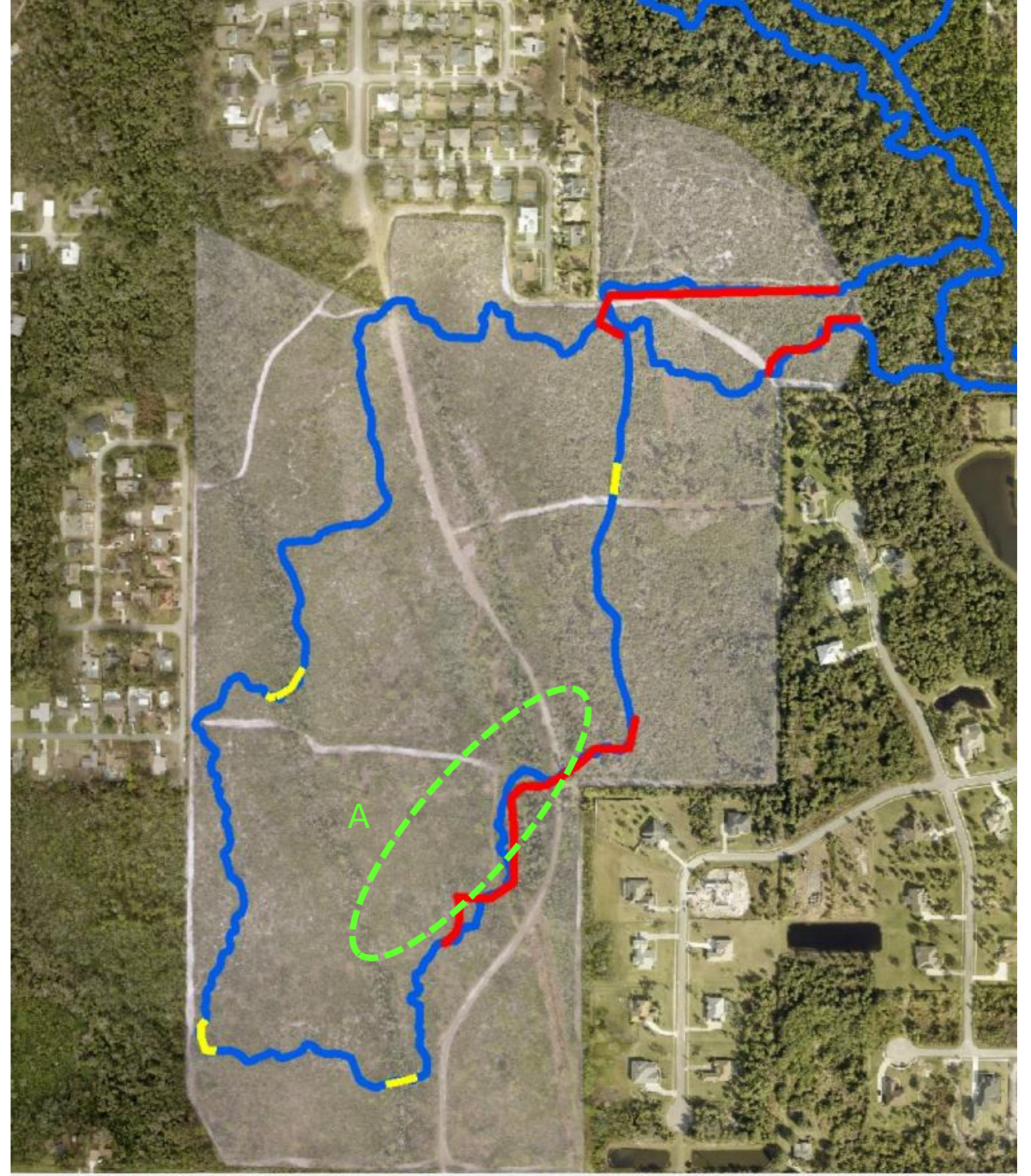


Malabar West Preservation Location A

This is one of the last areas unmodified from the original trail buffer compromise

TOM requests minimal tree overstory removal in this area, removal of sand pines or particularly tall pines, but no removal of scrub oak overstory, for the following reasons:

- 1) About half of this trail length shown is crossing a wetland and Turkey Creek channel D, and is a much different habitat.
- 2) It is tucked against Stillwater Preserve, which also provides a line of “screening trees”, and tree removal here does not really advance EEL Pgm goals to get greater buffer to screening trees

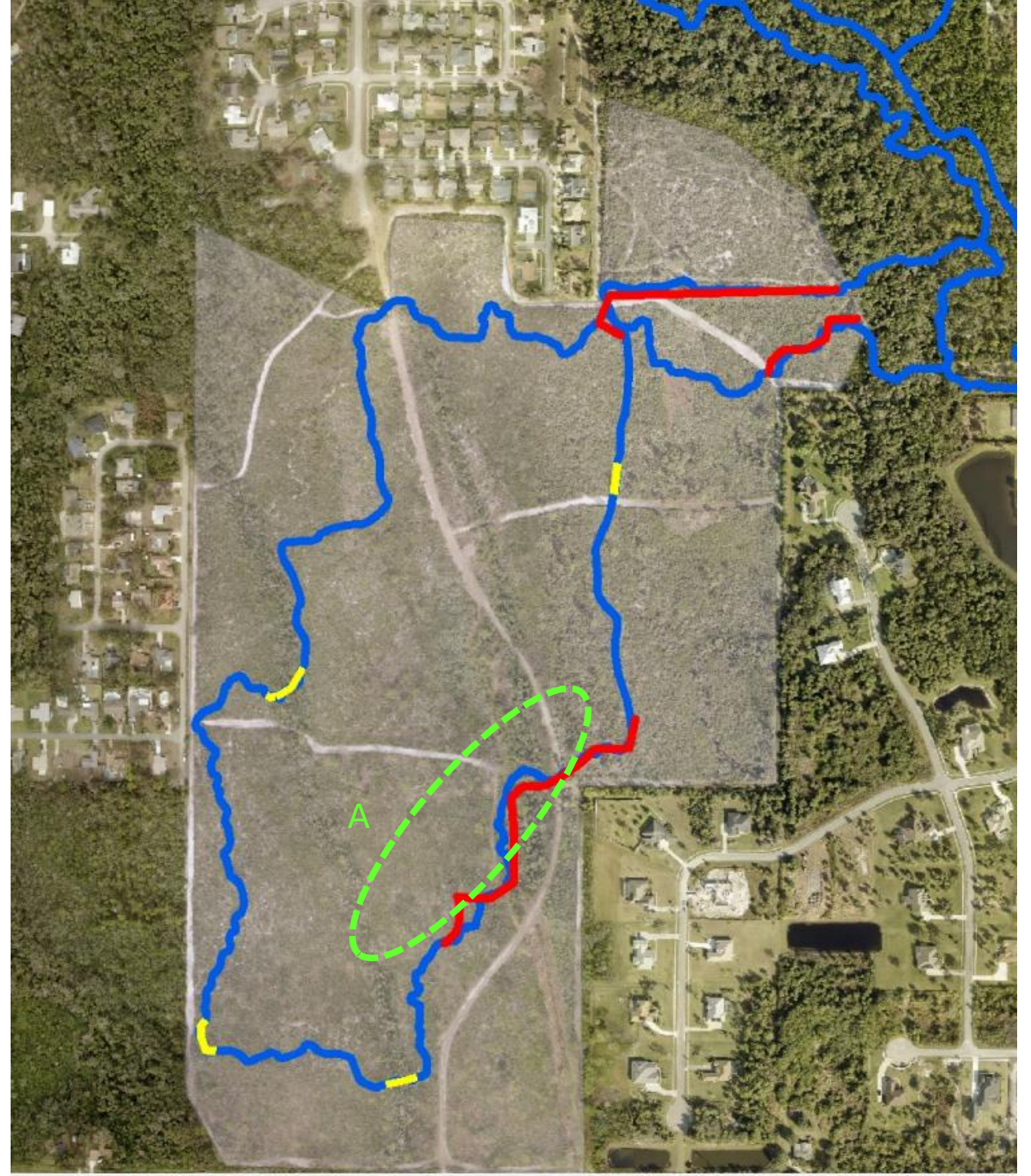


Malabar West Preservation Location A

This is one of the last areas unmodified from the original trail buffer compromise

TOM requests minimal tree overstory removal in this area, removal of sand pines or particularly tall pines, but no removal of scrub oak overstory, for the following reasons *continued*:

- 3) Stillwater Preserve subdivision residents have expressed concerns with tree removal at this location
- 4) Tree preservation here provides trail users with a brief section that looks and feels like deep woods, after a long and largely exposed walk/ride south down the trail section above

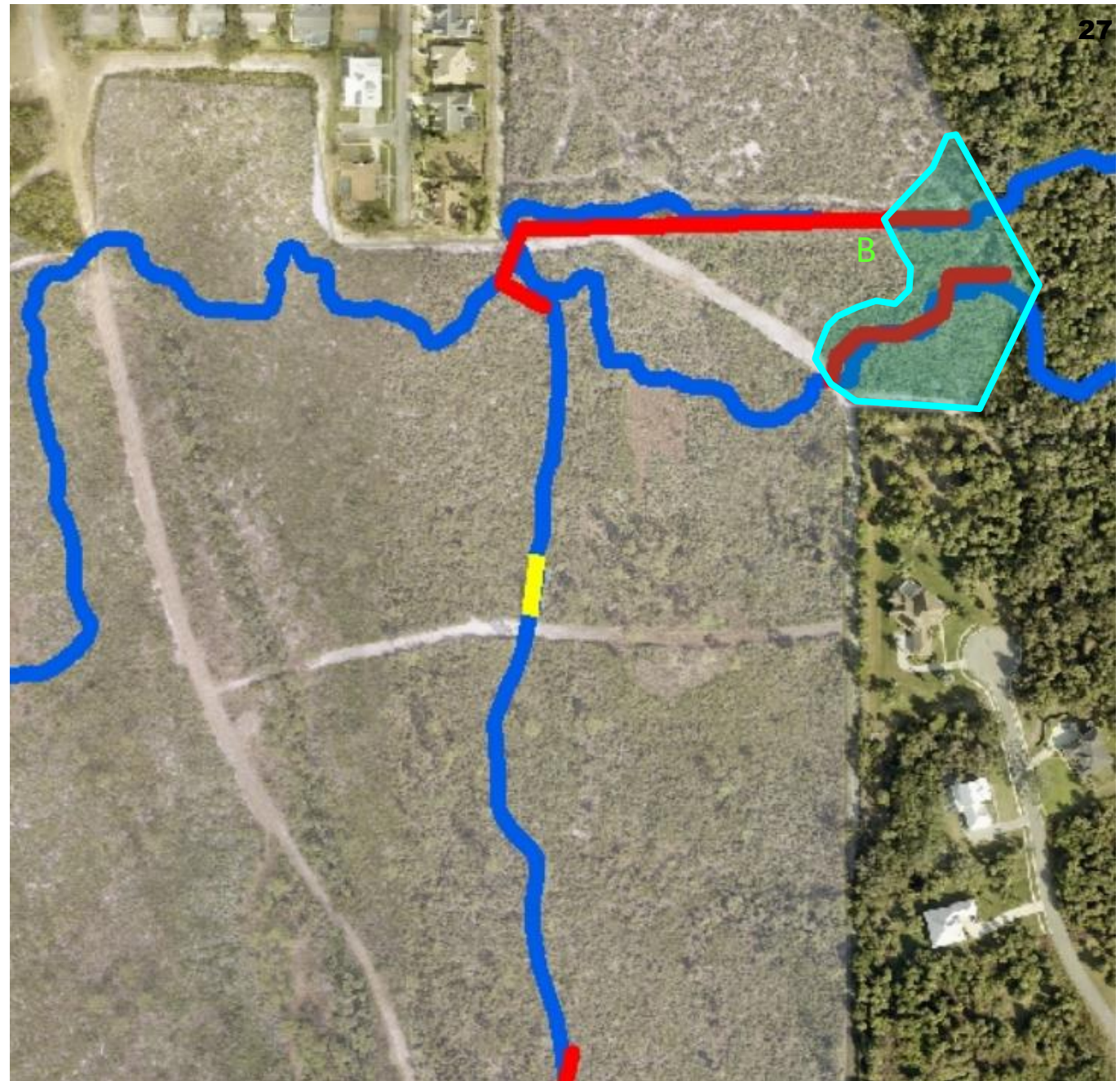


Malabar West Preservation Location B

This area habitat is transitioning to habitat of the Turkey Creek channel area. It is currently not very tall scrub, and as a trail user, you can recognize this unique transition from scrub to deep woods habitat.

TOM requests minimal tree overstory removal in this area, for the following reasons:

- 1) This area transitions to a deep woods habitat, and changes to to live oaks and palms
- 2) This area is tucked into a small “pocket”, and does not significantly advance the habitat goals to increase distance to screening trees (this “pocket” is about 100’ across)

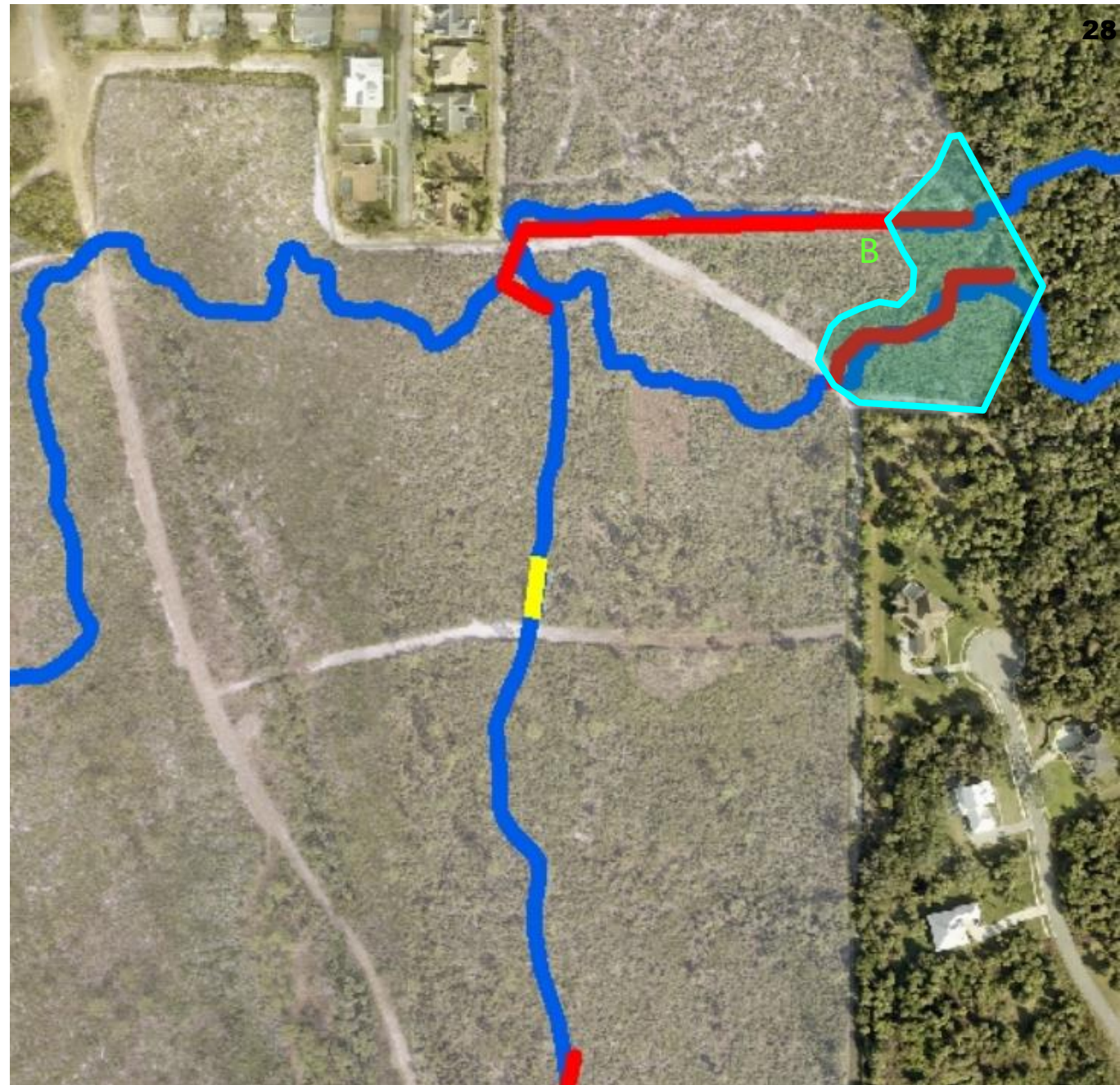


Malabar West Preservation Location B

This area habitat is transitioning to habitat of the Turkey Creek channel area. It is currently not very tall scrub, and as a trail user, you can recognize this unique transition from scrub to deep woods habitat.

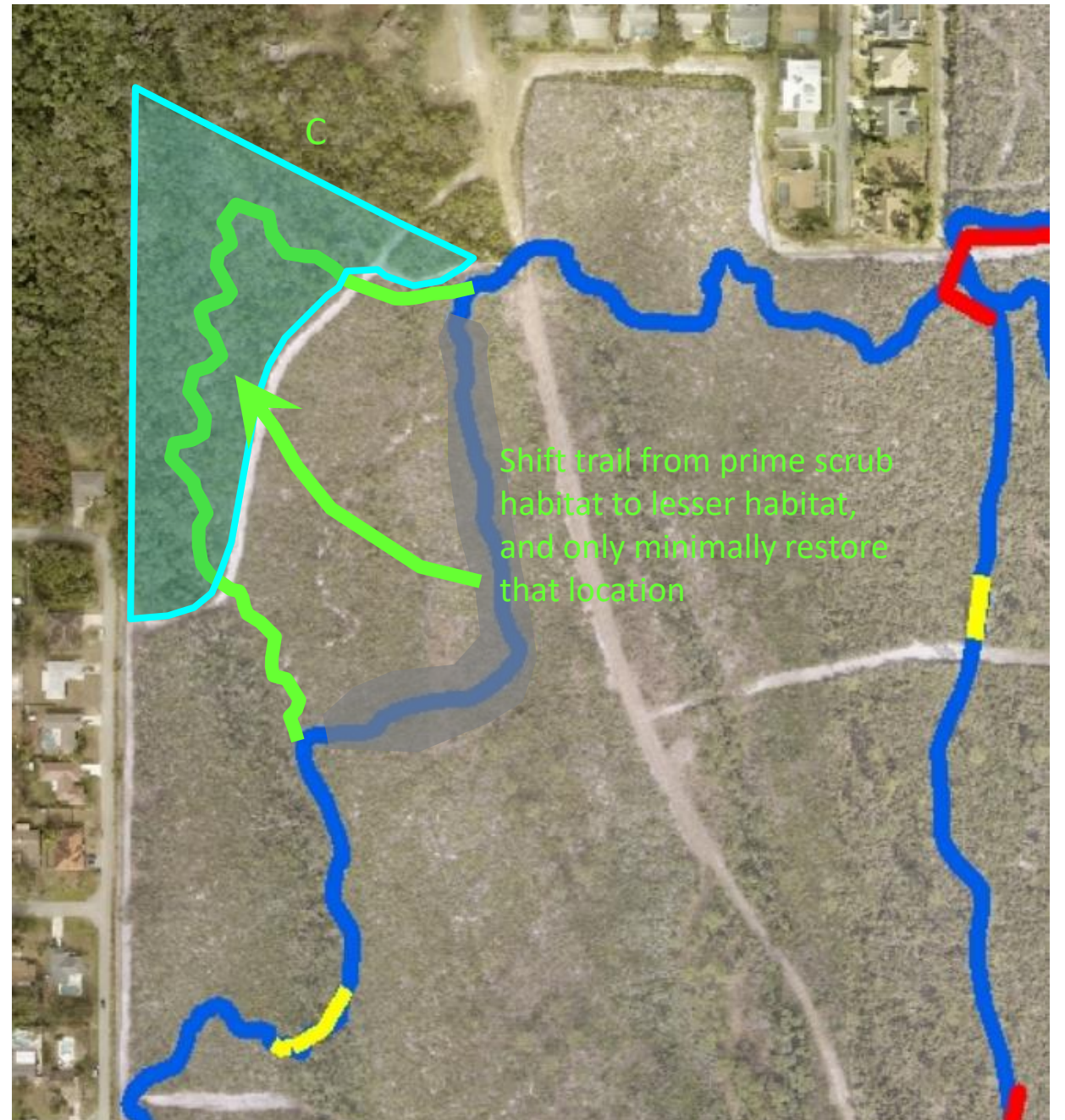
TOM requests minimal tree overstory removal in this area, for the following reasons *continued*:

- 1) This area is one of the better trail areas to experience the transition to the deep woods
- 2) Scrub oaks are not particularly tall in this area (15' average)
- 3) Southern portion is a location where local photographers take “ideal Florida” pictures. This is a favorite trail section of trail users.



Malabar West Preservation Location C

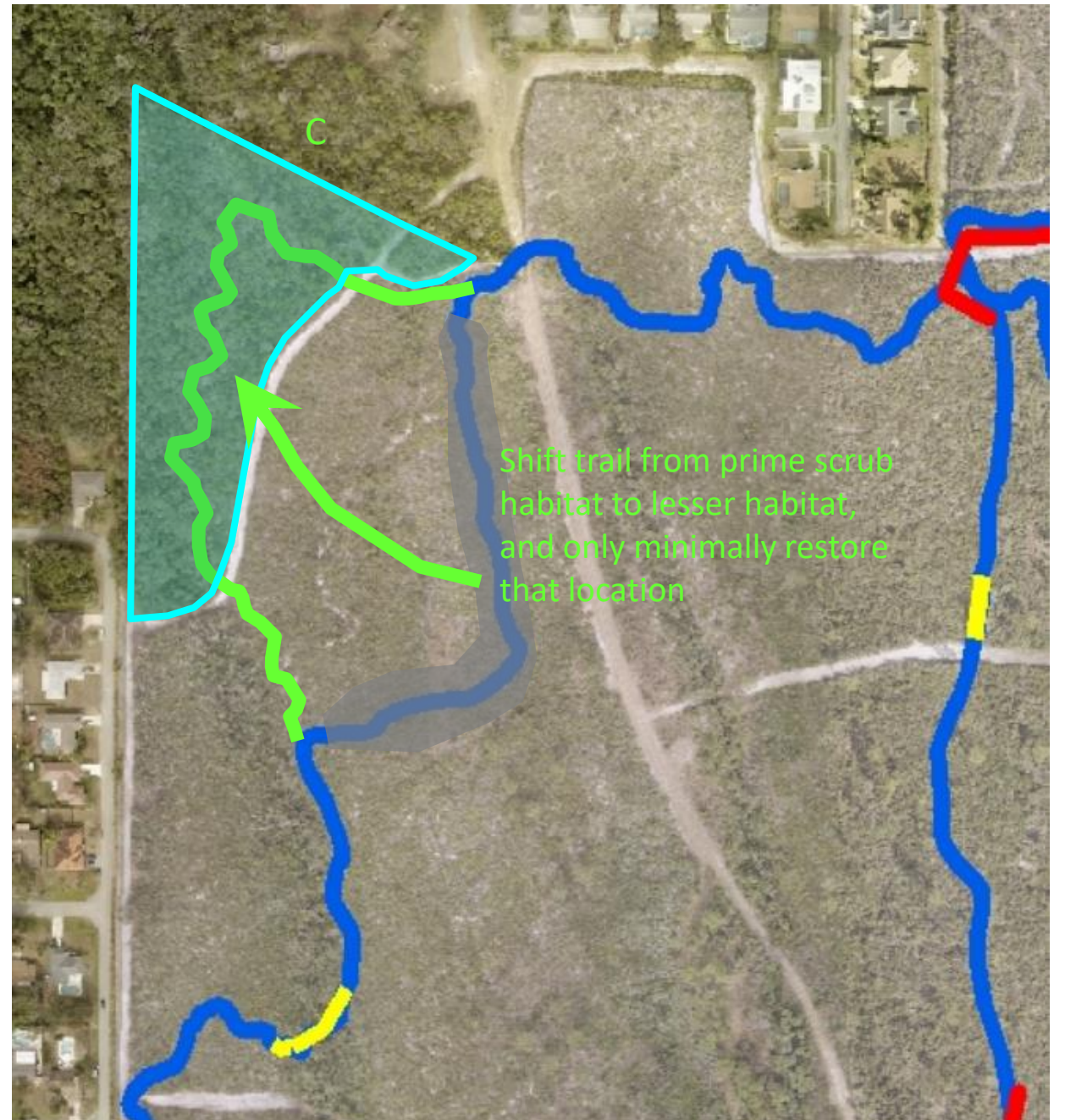
Habitat in this area is also transitioning to the Turkey Creek basin area, and more importantly, it provides an important connector to the N-S wooded area that separates the City of Palm Bay from Brook Hollow subdivision. It provides an important game corridor for animals. It is transitioning to the creek habitat to the North. This area offers an excellent opportunity to relocate a trail that would benefit both trail users, and the EEL Pgm environmental goals. Further, moving a trail out of a more prime scrub habitat to a habitat that is not prime habitat will result in additional prime scrub habitat.



Malabar West Preservation Location C

TOM requests minimal tree overstory removal, limited to removal of sand pines as necessary, with tapering of the edge down to fire break, removal of tall pines on fire break, and some Fecon thinning for the following reasons:

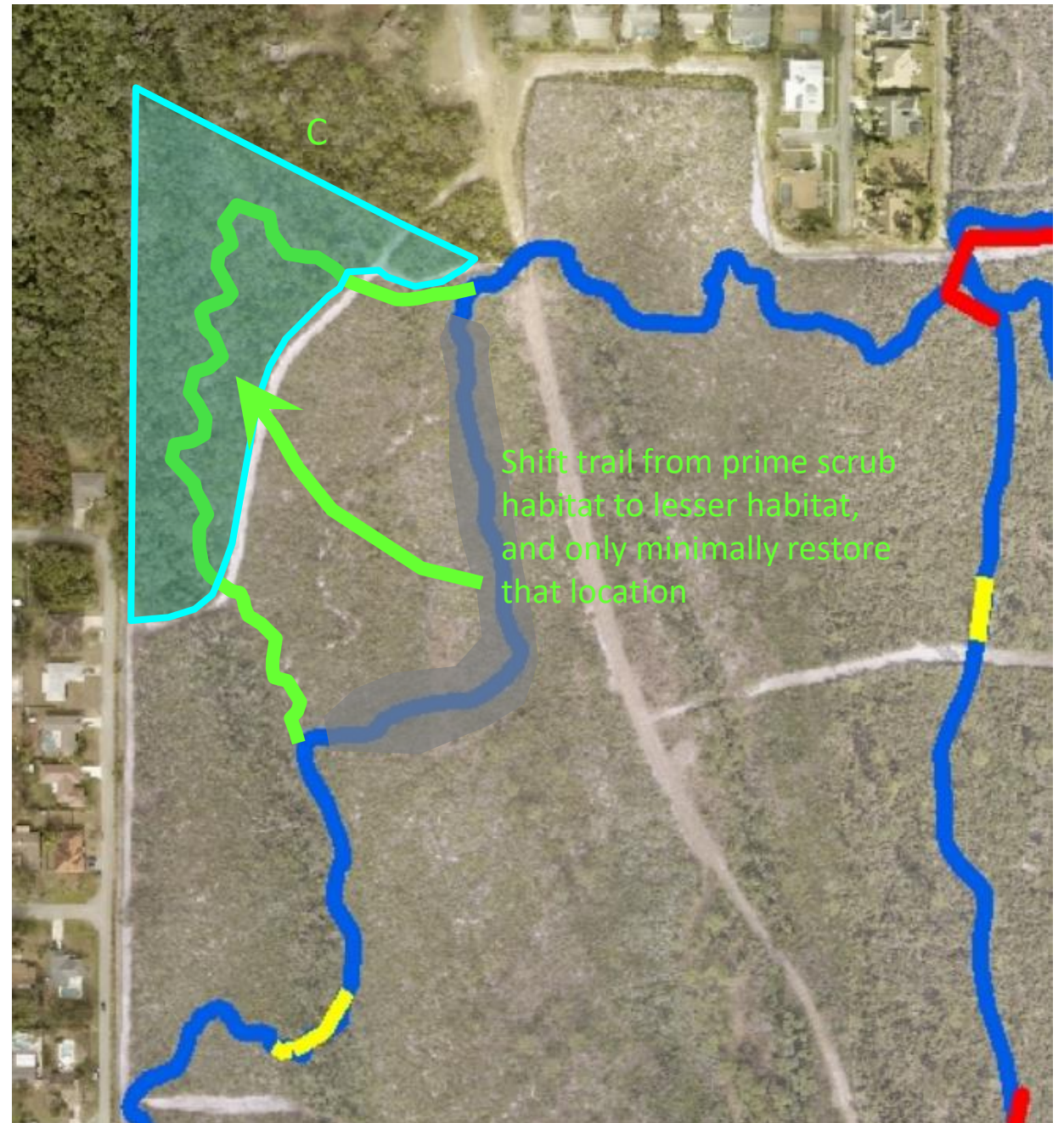
- 1) This area is important connectivity to, and similar to, the property to the North
- 2) Provides an important game corridor looking at the overall map



Malabar West Preservation Location C

TOM requests minimal tree overstory removal, limited to removal of sand pines as necessary, with tapering of the edge down to fire break, removal of tall pines on fire break, and some Fecon thinning for the following reasons *continued*:

- 3) This area is never going to be prime scrub habitat, and it would be better used by trail riders, shifting a trail from prime habitat to less prime habitat
- 4) End result of relocating the trail provides a larger prime scrub habitat and relocates the trail to a non-prime area that will also provide a better experience for the trail user. **Win-Win.**



Malabar West Preservation Location D

There are a few beautiful mature scrub oaks in this area that serve as a shade break and rest area from a largely shade-free run up from the South. It also serves as a small tree buffer against Brook Hollow subdivision (some of the only remaining historic scrub oaks left that once dominated this area).

TOM requests minimal tree overstory removal in area “D”, just removing sand pines, dead scrub oaks (from past burns) and excessively tall pines if needed for the following reasons:



Malabar West Preservation Location D

TOM requests - reasons continued:

- 1) Small buffer against Brook Hollow subdivision
- 2) Leaves some of the historic scrub oaks at a sanctuary entrance where trail users can see and enjoy them. This area is used by evening walkers everyday
- 3) Provides trail riders a very short shade break at this trail intersection
- 4) Does not significantly affect the habitat goals – it is a very small area located on the sanctuary edge – other tall screening trees are within 300' to N and E



Malabar West Preservation Location D

E-W trail that moves uphill in this area. Trail is currently problematic. After the last restoration effort, there were many piles of trees in the area (~14). Some of those piles caught fire and fire fighting plows damaged half of the trail. The trail has never been an ideal trail. Historically, there was another trail along the bank of Turkey Creek Channel D that went fallow after 2004 hurricanes. This is possibly a long-term goal, but here is a possible “Win-Win” scenario, by shifting the trail to deep woods habitat, and running back in along the edge near brook hollow fire break, both trail users experience and additional scrub habitat result.



Malabar West Preservation Location D

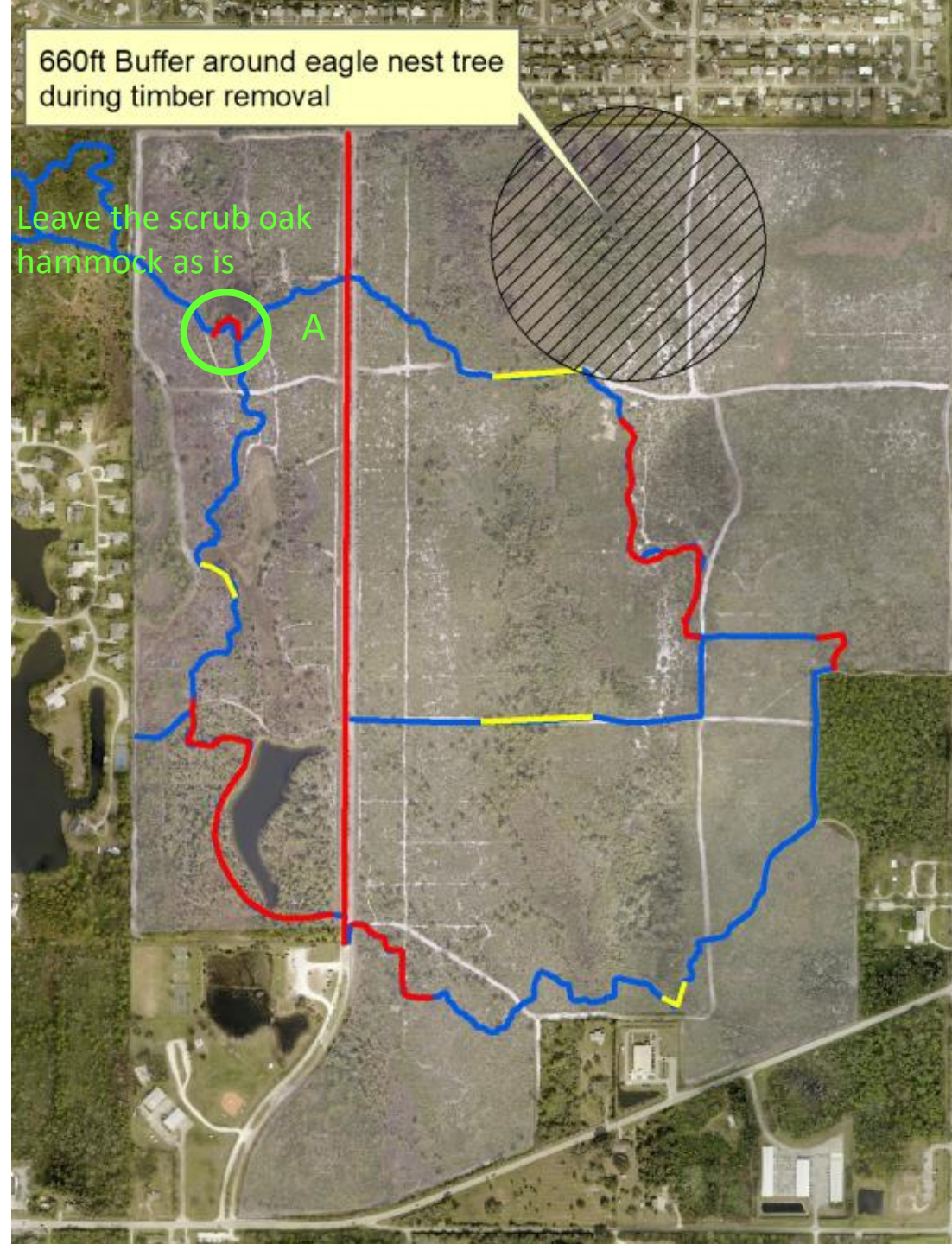
TOM requests a shift of the trail shown to approximate new location shown for the following reasons:

- 1) This trail was historically present but “dead-ended” and was not re-opened after the 2004 hurricanes
- 2) Possible Win-Win for both trail users and EEL Pgm environmental goals – allowing larger prime scrub habitat not interrupted by trail with a better trail user experience



Malabar East Preservation Location A

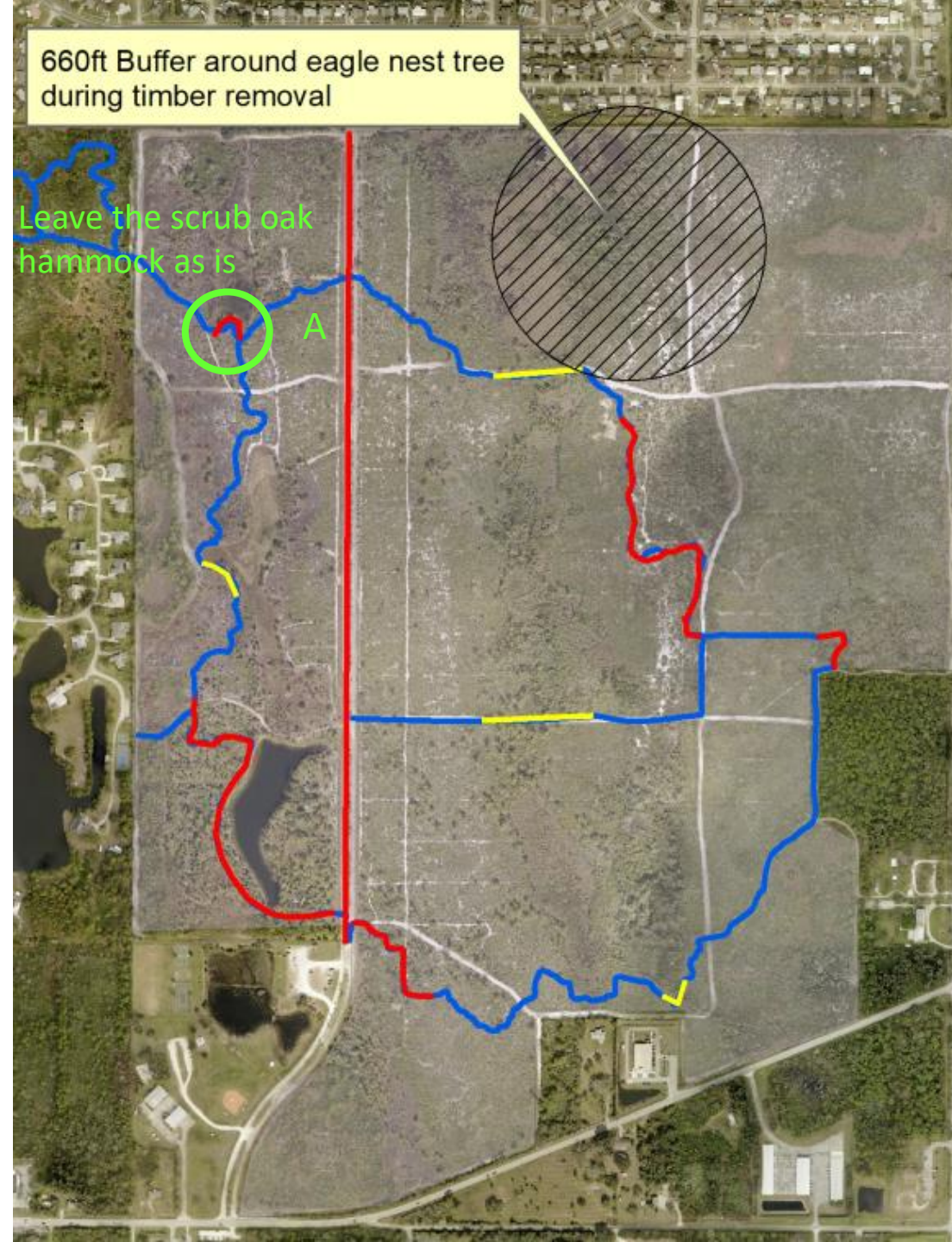
In past MSS restoration efforts by ELL Pgm, this small oak hammock was negotiated to be preserved specifically as a small spot of “historic woods”, it is a hammock of scrub oaks, as were present prior to a previous restoration (see next page for photo from 2001, nearby this location). The area is small, possibly 100’ in diameter, and of little overall consequence to the EEL Pgm environmental goals. It should be recognized that, in its current unrestored condition, Scrub-Jays are often seen in the understory of this area.



Malabar East Preservation Location A

TOM requests minimal tree overstory removal in this area, just removal of sand pines and the taller pine trees, for the following reasons:

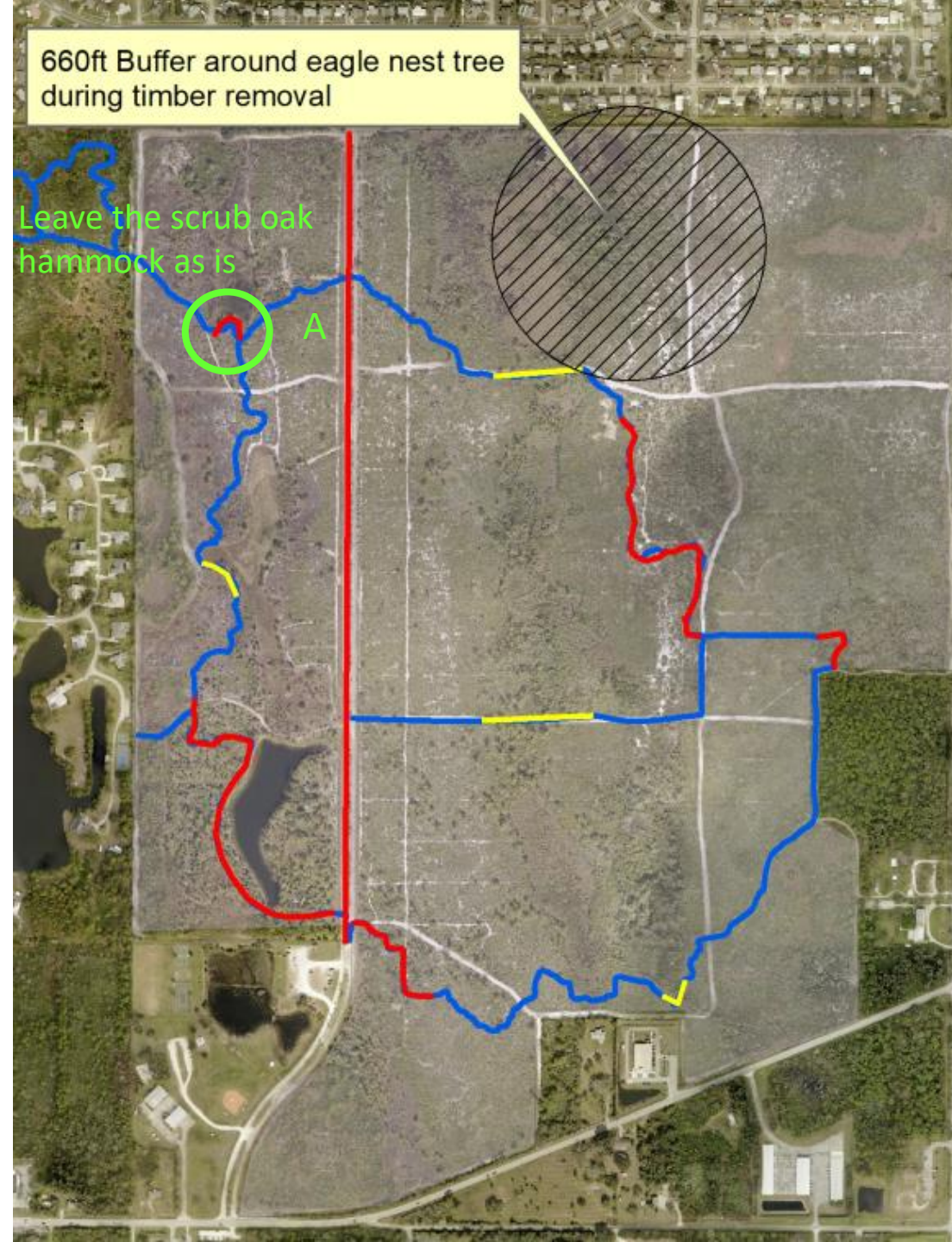
- 1) We often see Scrub Jays in this area. They seem to take refuge in the understory of the Scrub Oaks.
- 2) It is a small area. It has been suggested that a grouping of trees, if small enough, is no different than a single tree
- 3) It is near the property boundary to the N and W



Malabar East Preservation Location A

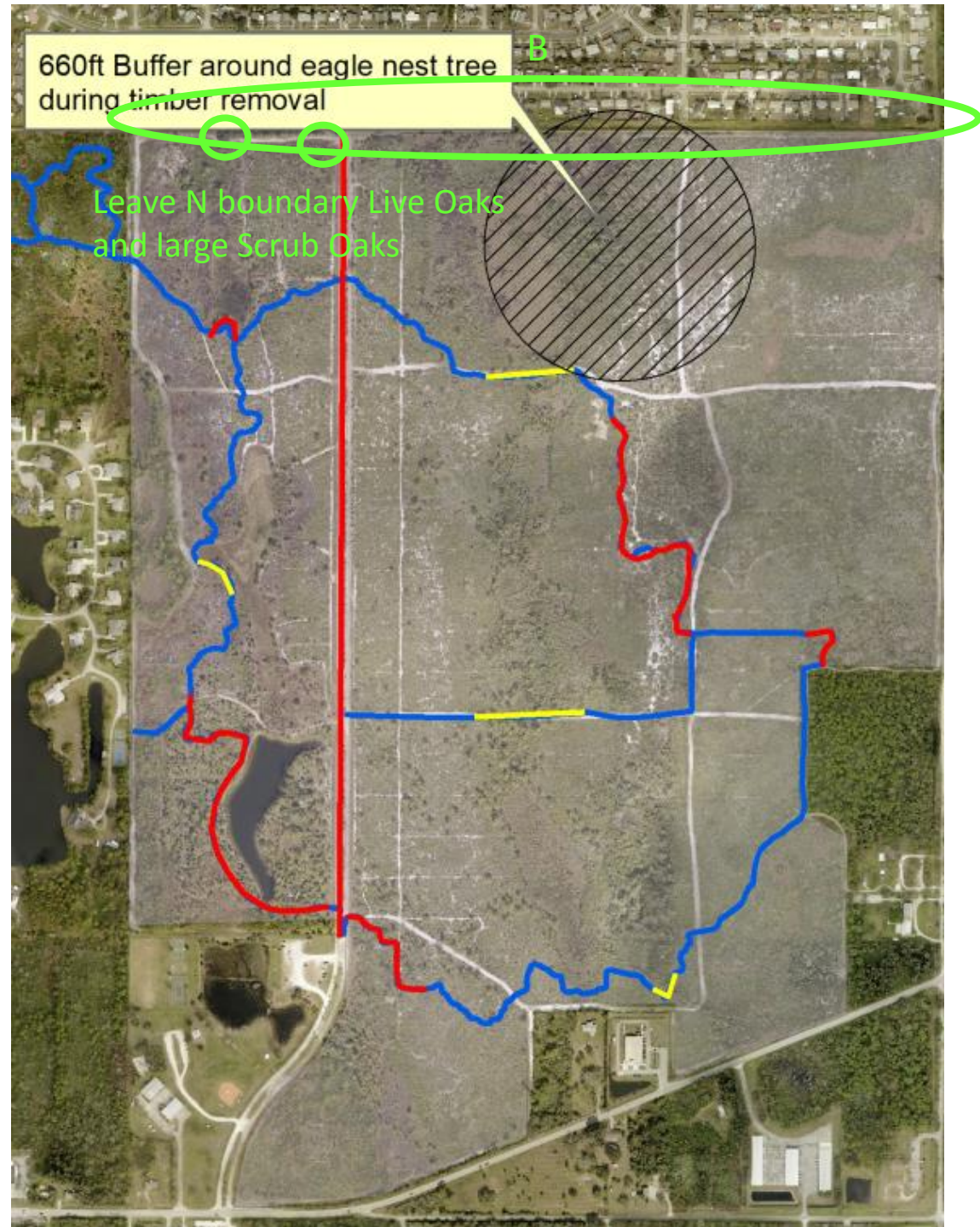
TOM requests minimal tree overstory removal in this area, just removal of sand pines and the taller pine trees, for the following reasons *continued*:

- 1) It is all that remains of a much larger Scrub Oak forest – the trail was re-routed into this small oak hammock back in early 2000's.
- 2) It provides trail users with a break of shade, after a long and largely exposed walk/ride throughout the rest of the sanctuary. It is a place to stop when overheating.



Malabar East Preservation Location B

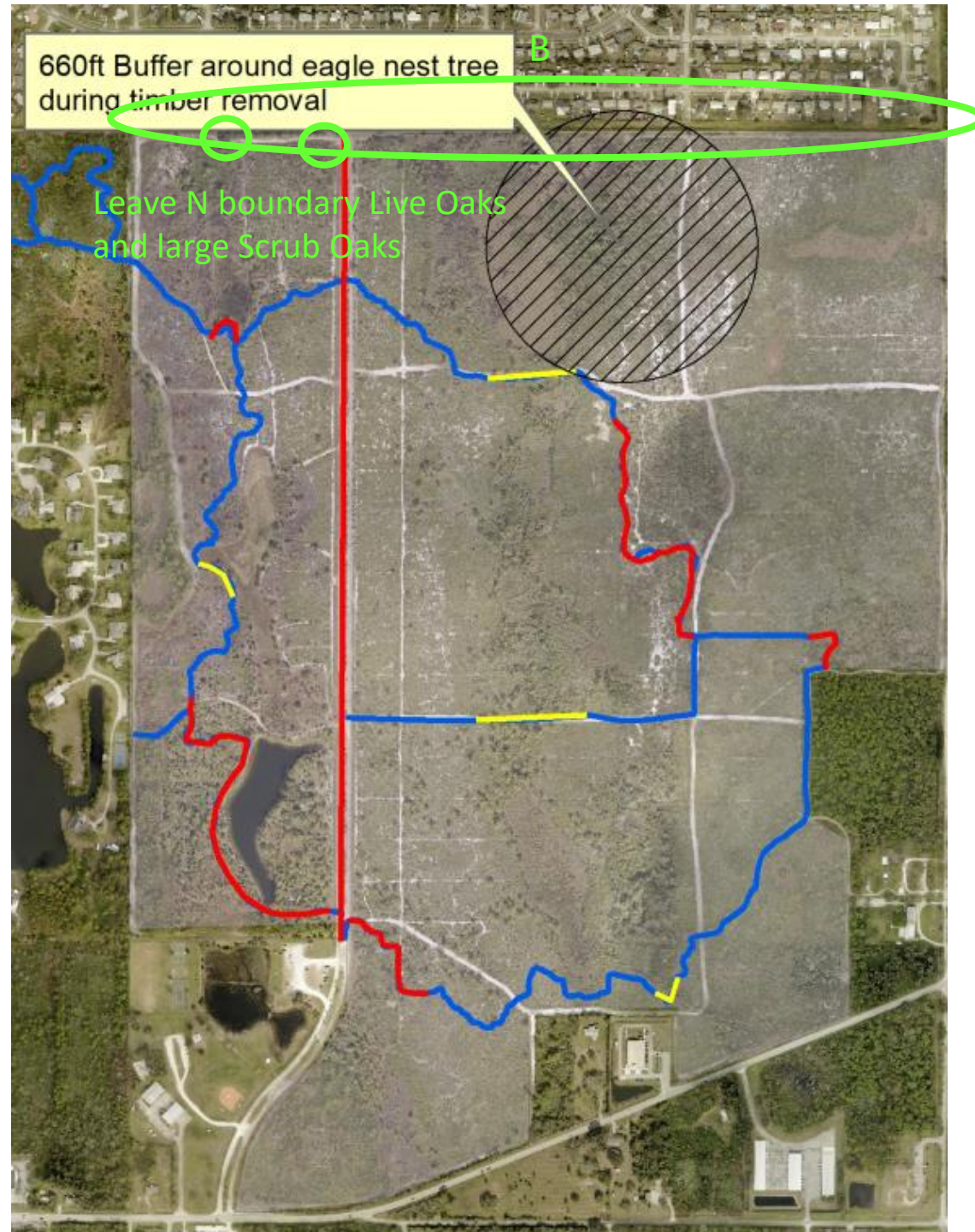
Live oaks are on far north property edge. There are several very large, mature oak trees along the north boundary most of these trees are already north of the fire break. These trees can be preserved with little affect on EEL Pgm environmental goals. These trees provide a visual break with the large urban area to the north.



Malabar East Preservation Location B

TOM requests that oak trees on North boundary be left, for the following reasons:

- 1) North edge of property (back up to property with power lines just 30' away to the north).
*Predator birds can also perch on power lines.
- 2) Trees provide a visual break from the nearby urban area
- 3) Provides tree shade for users near the paved Al Tuttle trail just north of this boundary



Malabar East Preservation Location C

TOM requests that this area be preserved “as-is”

- 1) This is a narrow edge on the property boundary, and does not affect the environmental goals of the program
- 2) Area dominated by depression marshes and wetlands (this is why the EEL program chose to move their fire break away from the property boundary)
- 3) Provides a visual break for Country Cove homeowners



Malabar East Preservation Location C

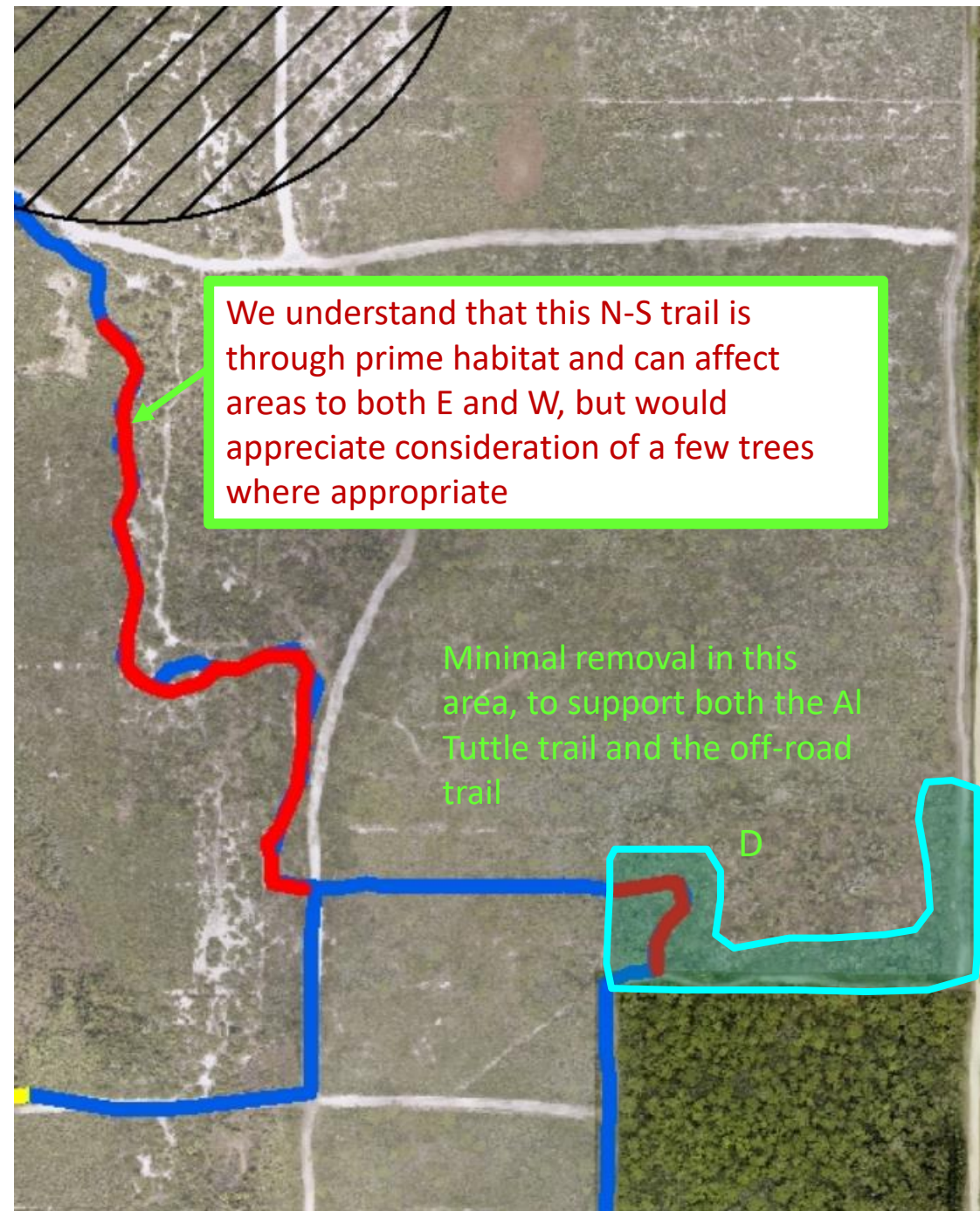
TOM requests that this area be preserved “as-is” for the following reasons:

- 1) This is a narrow edge on the property boundary, and does not affect the environmental goals of the program
- 2) This area is dominated by depression marshes and wetlands (this is why the EEL program chose to move their fire break away from the property boundary)
- 3) These key location trees provide a visual break for Country Cove homeowners



Malabar East Preservation Location D

This is largely a palm and live oak hammock, that is likely left over from an old farm. It is a very wet area. It provides a good trail user experience. A small amount of this could be preserved against the AI Tuttle Trail (A Brevard County SCTPO Showcase Trail), and encompass part of the off-road trail, significantly enhancing the trail user experience with minimal affect on the EEL Pgm environmental goals – please see photo on next page.



Malabar East Preservation Location D

The Al Tuttle Trail is recognized as a Brevard County Showcase project

There are very tall trees on private property, immediately adjacent to the trail to the S

Request the EELp leave ~25' of trees next to trail to give the illusion of being in the woods, and improve the trail user experience.

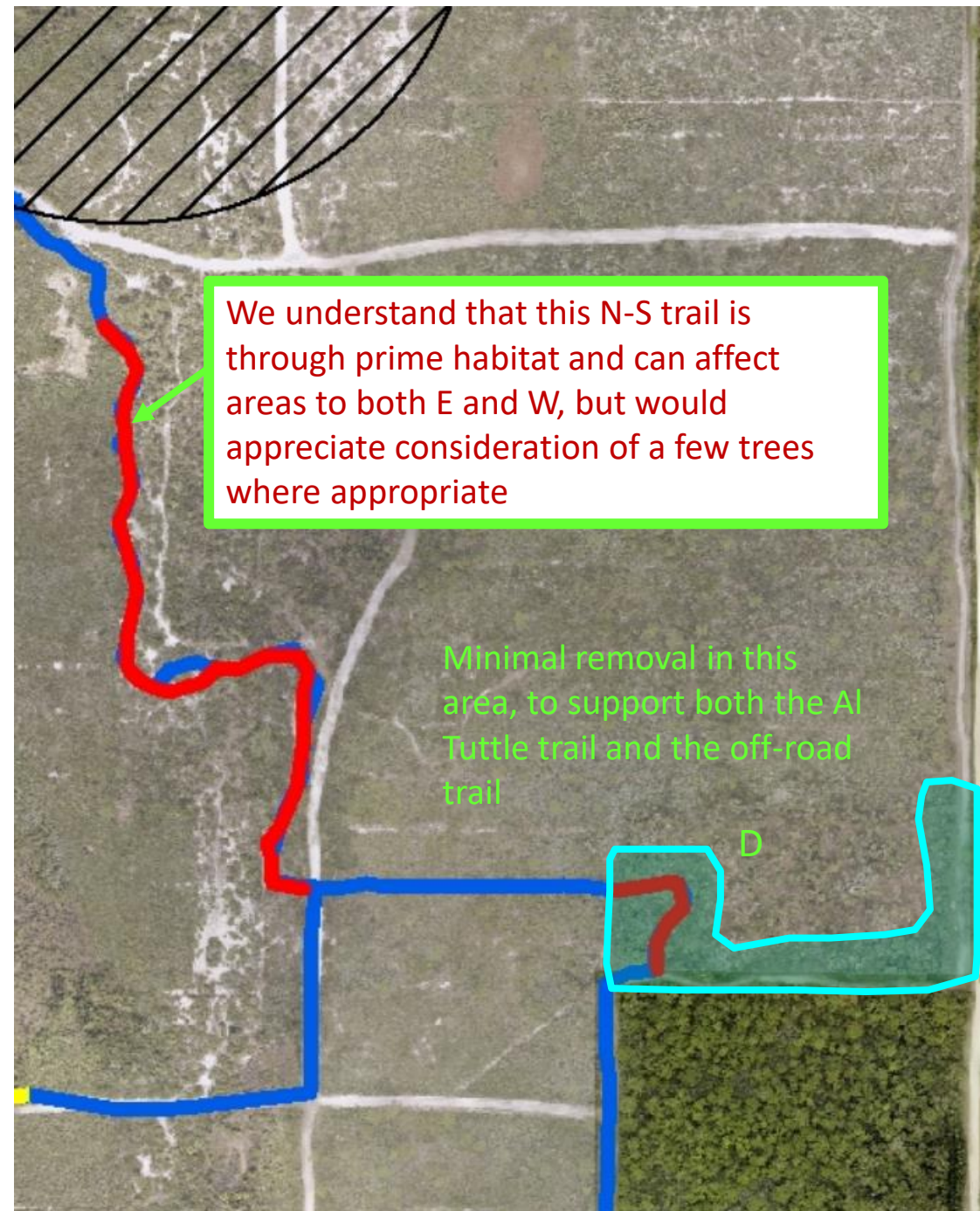
Leave large oaks near trail in place



Malabar East Preservation Location D

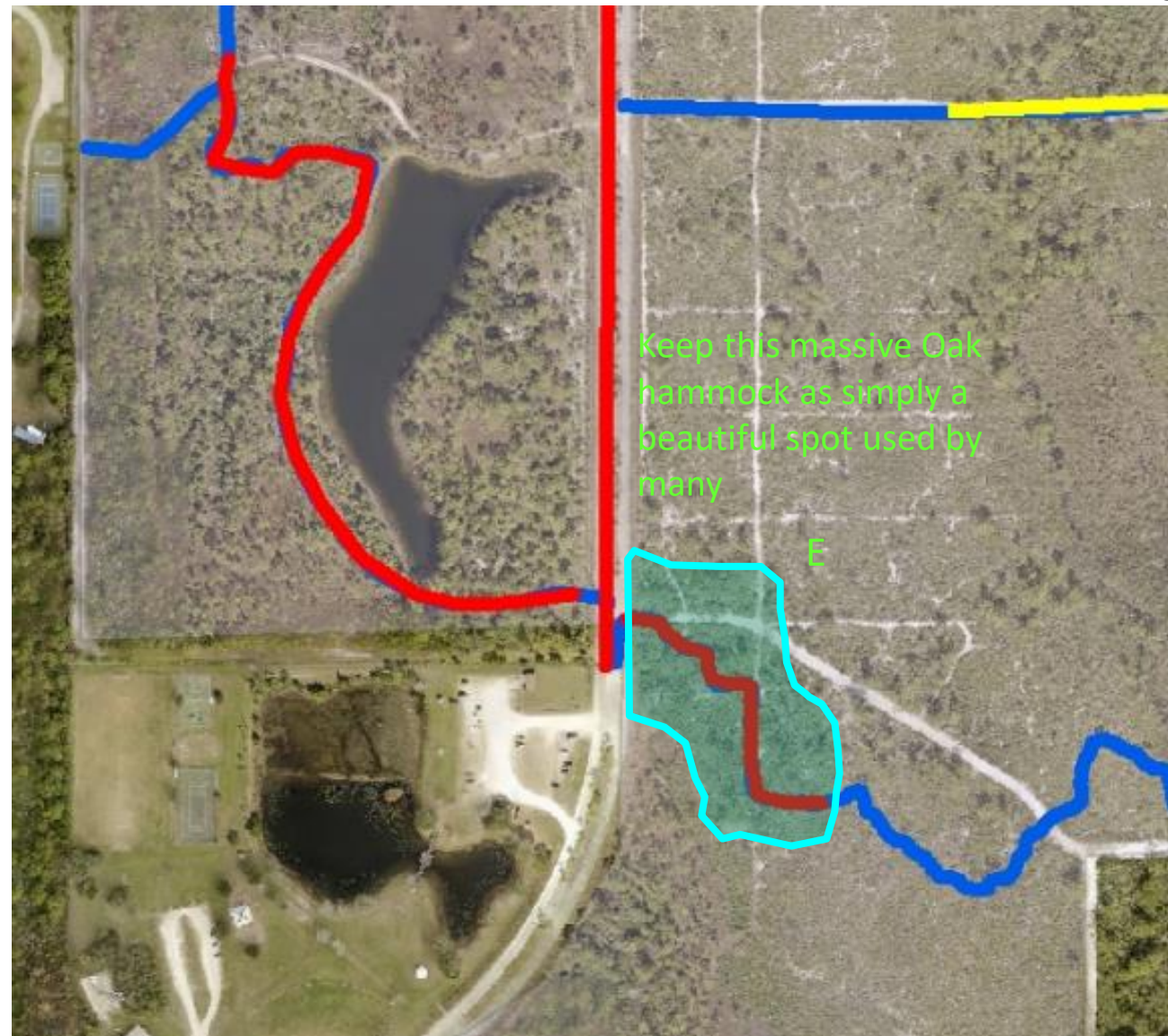
TOM requests minimal tree overstory removal in this area, just removal of sand pines, for the following reasons:

- 1) Enhance both the AI Tuttle Trail and the off-road trails by preserving a small area of woods ~25' for user experience
- 2) This area is on the very edge of the sanctuary property and will have minimal affect on the overall goals of the EEL Pgm – very tall trees, on neighboring private property are immediately adjacent to this location and only about 15' away
- 3) Small area overall
- 4) As a wet area, this will never be prime scrub habitat



Malabar East Preservation Location E

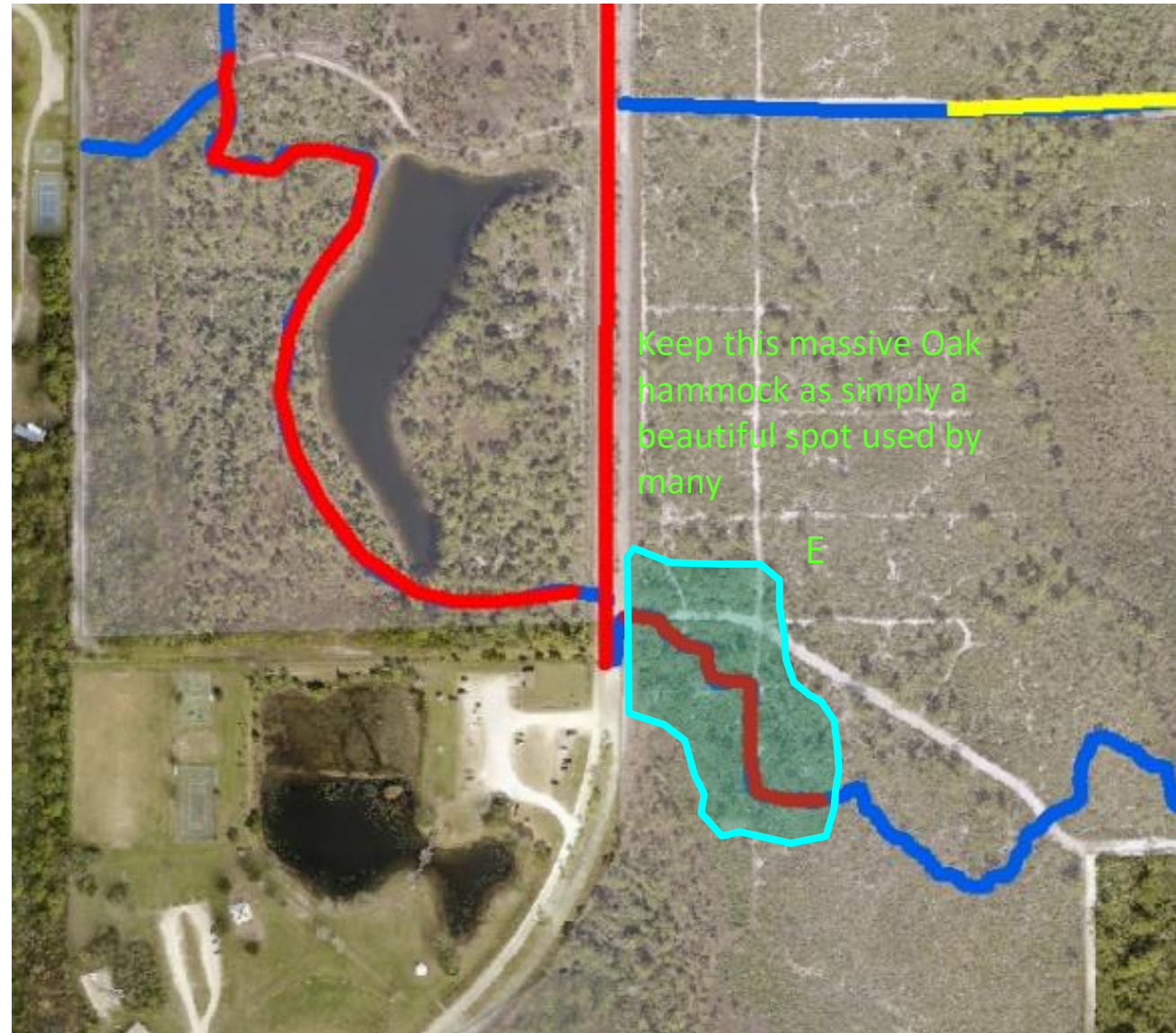
This is a very large Scrub Oak hammock left as part of the original 2001 restoration compromise. It was specifically left not for trail users, but as a focal point of the main EEL Pgm sanctuary entrance, and also to enhance the adjacent Malabar Park. Many, many people use this area. Wedding pictures are taken here, bridal showers, pregnancy pictures, trail users all frequent this special area.



Malabar East Preservation Location E

TOM requests no removal of Scrub Oaks in this area, just removal of sand pines, and possibly tall pine trees, for the following reasons:

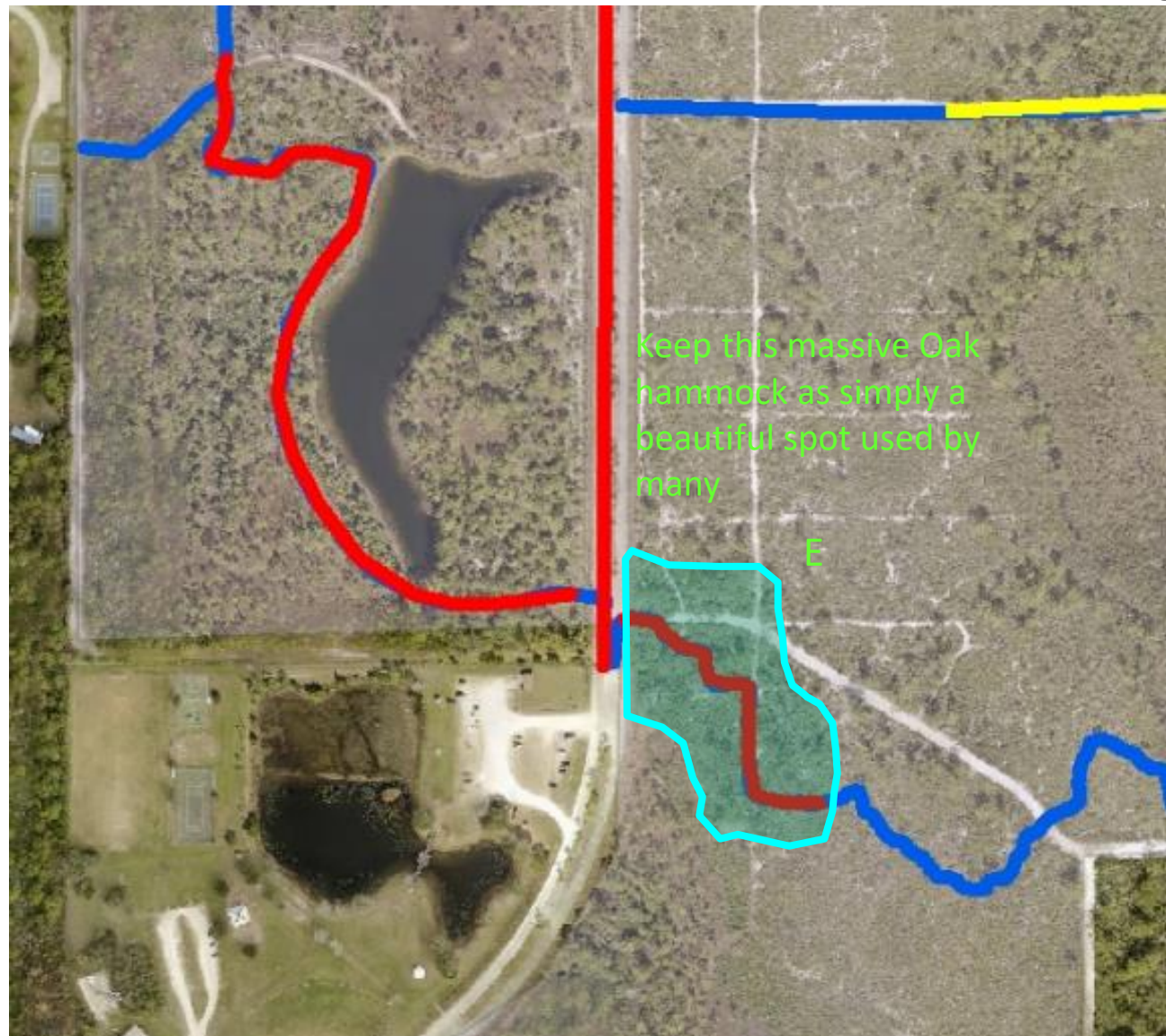
- 1) This is the Sanctuary main entrance. This is the highlight of the sanctuary. Most trail walkers walk only ~100 yards, and this area gives them an enchanting experience
- 2) Used by many people besides trail users
- 3) The area is very small area overall
- 4) It was part of the original 2001 trail compromise for MSS



Malabar East Preservation Location E

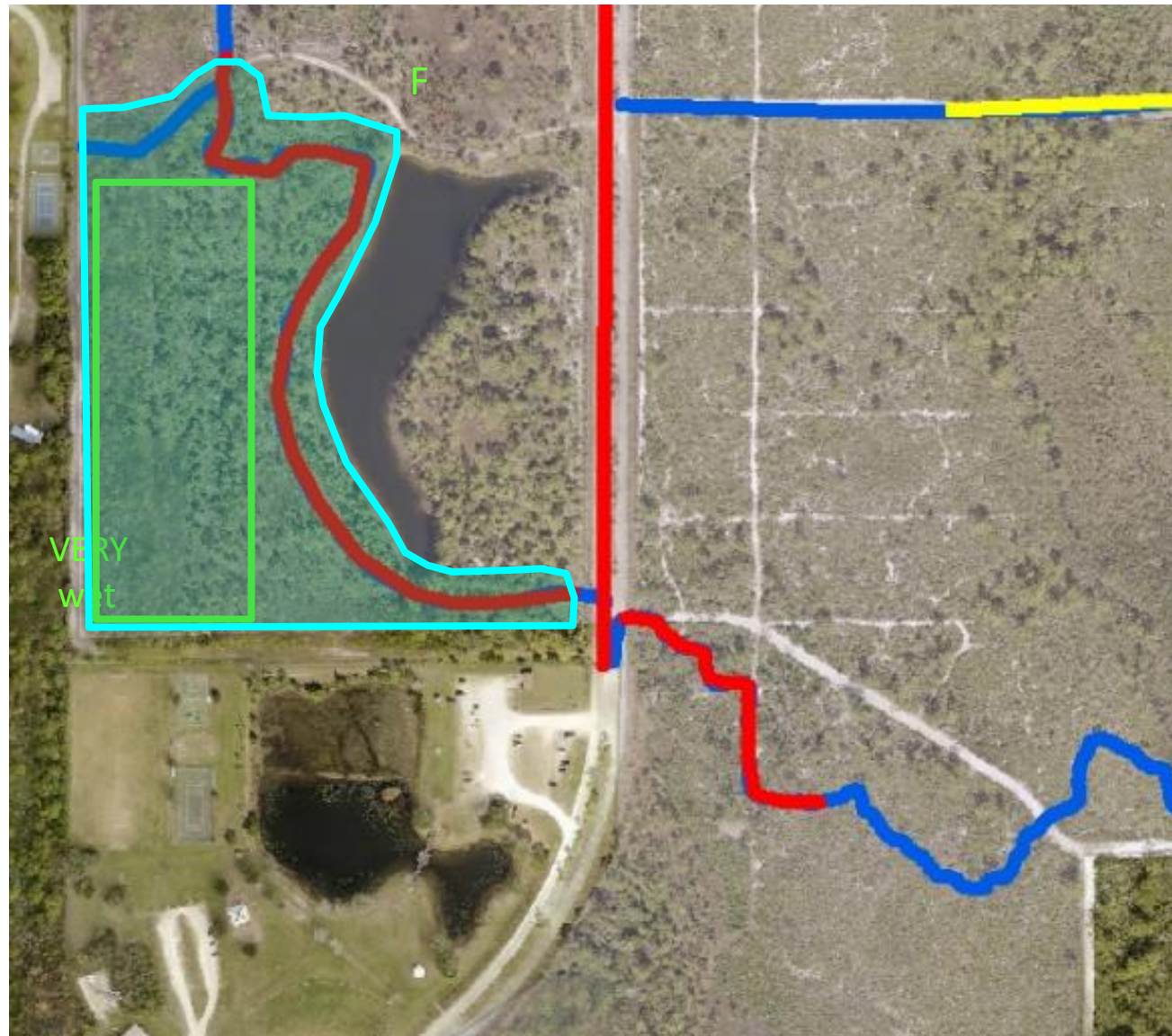
TOM requests no removal of Scrub Oaks in this area, just removal of sand pines, and possibly tall pine trees, for the following reasons *continued*:

- 5) On the property boundary. Not a huge affect to environmental goals. This complex area already has screening trees within 400' to both the E and S.
- 6) Enhances the adjacent Malabar Park
- 7) Best area to view various woodpeckers
- 8) Scrub Jays often seen on the N part of this area, under the oak canopy
- 9) This is the signature area of MSS East



Malabar East Preservation Location F

This is an unusual area. Very wet, some pines and sparse palmetto, it will never be good scrub habitat. The lake is a focal point of the sanctuary with mostly walking families and fishermen. This area must be walked to understand it. There is a large, tall ridge of dirt on the E bank of the lake (spoils from digging the lake), which screens the area away from the trees to the S-W. West bank of lake is ~600 feet from edge of scrub habitat. Given the “screen” provided by the spoils piles on the lake W bank, this should be adequate.



Malabar East Preservation Location F

TOM requests that minimal restoration be done here, near trail, for the following reasons:

- 1) West lake bank ~600 feet from scrub habitat
- 2) Serves as a focal point of the sanctuary entrance
- 3) Used by many folks other than trail users. A favorite location for fishermen teaching kids to fish.
- 4) Provides a screen of trees from Malabar Community Park
- 5) Provides a screen of trees to adjacent properties
- 6) This is a wet environment and will never be optimal scrub habitat

