



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9.

3/12/2024

Subject:

Approval; Re: Brevard Zoo Linear Park Agreement with the East Coast Zoological Society, Inc. (District 4)

Fiscal Impact:

None

Dept/Office:

Brevard County Parks and Recreation Department

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Brevard Zoo Linear Park Agreement.

Summary Explanation and Background:

The Brevard Zoo Linear Park was approved by the voters in the 2000 South Brevard Recreation Special District Bond Referendum. Phase I, comprised of 1.1 miles of elevated boardwalk, fifty-four paved parking spaces at the trailhead and associated trailhead amenities, was completed 2014. Phase II, funded through a FDOT LAP Agreement, comprised of approximately two miles of trail from the north cell tower to Turtle mound Road, was completed in 2017.

The Board of County Commissioners entered into a ten-year Agreement whereby the Zoo would operate and maintain the Trail. That Agreement ends on March 31, 2024 and it is desirous that Brevard County Parks and Recreation Department assume the operation and maintenance of the Linear Trail. The Zoo will continue to maintain the parking area.

Clerk to the Board Instructions:

Please return executed Agreement to Mary Ellen Donner, Brevard County Parks and Recreation Department or call 321-633-2046 for pick up.



March 13, 2024

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director


RE: Item F.9., Approval for Brevard Zoo Linear Park Agreement with the East Coast Zoological Society, Inc.

The Board of County Commissioners, in regular session on March 12, 2024, approved and authorized the Chair to execute the Brevard Zoo Linear Park Agreement with the East Coast Zoological Society, Inc. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

Encl. (1)

BREVARD ZOO LINEAR PARK AGREEMENT

Agreement made and entered into this 12 day of March, 2024, by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida ("County"), and the East Coast Zoological Society, Inc. ("Zoo") concerning the facility known as the Brevard Linear Park ("Park").

WHEREAS, the Zoo owns and operates a facility known as the Brevard Zoo; and

WHEREAS, the County constructed certain elements of the Park on portions of Zoo property, and to provide a public access thereto through the entrance to the Zoo and its service roadway; and

WHEREAS, the parties to this Agreement agree that activities at the Park and Zoo will complement each other; and

WHEREAS, the Zoo has agreed to allow the public to cross Zoo property to access the Park; and

WHEREAS, the County has agreed to provide maintenance, repair, replacement and improvements for the entirety of the publicly accessible Park; and

WHEREAS, The County agrees to allow the Zoo use of the overflow parking for the Zoo in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the parties agree as follows:

1. **BREVARD LINEAR PARK.** The Park is a public greenway trail located as depicted on Exhibit "A". The North Trailhead includes the trailhead turnaround, the trailhead, and appurtenances. The use of motorized vehicles by the Zoo within the Park shall be limited to, zoo employees, and agents of the zoo for official zoo business.

2. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective upon signature of both parties and shall continue for a term of five (5) years. Upon expiration of the current term, this Agreement shall automatically renew for additional one (1) year terms unless terminated by either Party.

3. **INSPECTION OF THE PROPERTY.** By March 31, 2024, the County and Zoo staff will have conducted an inspection of the trailhead and trail. It is agreed that the Zoo, at their sole expense, will correct any existing maintenance issues noted during the joint inspection prior to April 1, 2024 and agreed upon by both parties. If the Zoo is unable to affect the repairs prior to April 1, 2024, the Zoo will contribute to the County the cost of the agreed upon repairs. Nothing herein shall constitute a waiver of sovereign immunity contrary to the limited waiver set forth in Section 768.28, Florida Statutes. Nothing herein shall be construed as consent to be sued by third parties.

4. **MAINTENANCE OF THE PARKING LOT.** The Zoo agrees to maintain the following at the prevailing industry standards at the Zoo's sole expense:

(a) The Zoo's driveway from Wickham Road to the Park Trailhead.

(b) **ADDITIONAL PARKING** - fifty-four (54) paved parking spaces as overflow parking for the Park and Zoo.

5. **PUBLIC ACCESS.** The Zoo agrees, at no cost to the County, to provide free public access across its driveway to the park as further depicted in Exhibit "A". The Zoo agrees that it will not prohibit the public from using the Park during posted open hours, as determined by the County. Unless both parties agree, the trail will be closed from 7 p.m. in the evening until 7 a.m. in the morning. Under no circumstances may the Zoo charge a fee for access to the Park or the ten parking spaces reserved for the park. It is understood and agreed that the continued and undisturbed operation of the Zoo is paramount to the Zoo. As such, the County may agree to alter the operation of the park to address the needs of the Zoo in addition to the restrictions listed below.

6. **MAINTENANCE OF PARK AND UTILITY SHED.** The County shall be responsible for the maintenance, repair, replacement and improvement of the Park at the sole cost of the County. Such maintenance and improvements include, but are not limited to, installing boardwalks, maintain trails, mowing, tree trimming and tree removal, installation of lights and signage, and security cameras. Upon termination of this Agreement, the County, in their sole discretion, may choose to remove any improvements.

The Zoo, at no cost to the County, shall allow the County access and use of the County owned utility shed on Zoo owned Property adjacent to the Park, as further depicted in EXHIBIT "B". Such shed shall be utilized by the County for storage of emergency rescue gear, vehicles, and maintenance equipment.

7. **USE RESTRICTIONS.**

(a) Notwithstanding the terms of this Agreement, the Zoo may temporarily close vehicular entry to its property at times deemed necessary by the Zoo for emergency purposes to ensure the safety of Zoo and Park patrons. The Zoo agrees to notify the County, in writing, of each instance of emergency Park closure, within 24 hours after the event.

(b) The Zoo is permitted to use motorized vehicles on the boardwalk for official Zoo business.

(c) Both parties to this Agreement may utilize the fifty-four (54) paved overflow parking spaces except any required handicap space for the County specifically constructed and allocable for the Park. The Zoo shall provide at least ten (10) overflow parking spaces for Park use at all times that the Park is open. The Zoo agrees to use signage to reserve ten overflow (10) parking spaces for Park.

8. **EXISTING IMPROVEMENTS.** Any existing improvements constructed or installed by the Zoo at the Park shall become the property of the County, at the County's option.

9. **INDEMNIFICATION BY THE ZOO.** The Zoo shall indemnify, defend and hold the County, its agents and employees harmless from and against any and all liabilities, claims, losses, damages and personal injuries (including but not limited to death) incurred by the County for persons utilizing the Park and are related solely to the Zoo's

alleged failure (i) to maintain and operate its driveway from Wickham Road to the Park trailhead and/or (ii) to maintain and operate the parking spaces described in Paragraph 4 of this Agreement located at or near the trailhead for which the Zoo has maintenance responsibility. The Zoo shall not be required to indemnify and hold harmless the County, its agents and employees, if such claim, damage, loss and expense is the result of the negligence or an act of intentional misconduct of the County or of any of its officers, agents, contractors or employees, and/or any other parties connected with the County.

10. INSURANCE.

(a) The Zoo, under Florida Statute 768.28, is not a covered party under the County's liability insurance. The Zoo, at its discretion, shall maintain insurance coverage for the portions of the trailhead and trail that are under ownership of the Zoo.

(b) The County shall not assume liability or responsibility for any incident or claim related to the Park prior to the execution of this Agreement.

11. TERMINATION. Either party may terminate this Agreement for their own convenience upon providing thirty (30) days written notice to the other party. The Park would then be closed to the public until a new agreement is reached.

12. CONVENANT AGAINST LIENS. The County shall do all things necessary to prevent the filing of any mechanics' or other liens against any and all property subject to this Agreement or any other interest of the Zoo by reason of any work, labor, services, or materials performed or supplied or claimed to have been performed or supplied to or by the County. If any such lien shall at any time be filed, the County shall either cause the same to be vacated and cancelled or record within twenty days after the date of the filing thereof or if the County in good faith determines that such lien should be contested, the County shall furnish such security, by surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien against the real property or any interest therein, and to prevent any foreclosure of such lien during the pendency of such contest. If the County fails to vacate or release such lien in the manner and within the time period aforesaid, then, in addition to any other right or remedy of the Zoo resulting from the County's said default, the Zoo may, but shall not be obligated to, vacate or release the same either by paying the amount claimed to be due or by procuring the release of such lien by giving security or in such other manner as may be prescribed by law. The County shall repay to the Zoo, on demand, all sums disbursed or deposited by the Zoo pursuant to the foregoing provision of this Paragraph. However, nothing contained herein shall imply any consent or agreement on the part of the Zoo to subject its estates or interests to liability under any mechanics' or other lien law, whether or not the performance or the furnishing of such work, labor, services or materials to the County shall have been consented to by the County.

13. DEFAULT AND REMEDIES. In the event of a default on the part of either party under this Agreement, the nondefaulting party shall have such remedies as may be available to it under the laws of the State of Florida.

14. NO PARTNERSHIP OR JOINT VENTURE. Nothing in this Agreement is intended to or creates any partnership or joint venture between the parties to this Agreement.

15. SUCCESSORS AND ASSIGNS, SINGULAR AND PLURAL USAGES. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and permitted assigns of the parties hereto. The Zoo may not assign its rights under this Agreement may not be assigned without the prior written consent of the County, which consent shall not be unreasonably withheld by the County. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.

16. NOTICES. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified mail, return receipt requested, postage prepaid, address to the respective party and the addresses set forth below.

To County:

BREVARD COUNTY, FLORIDA
Brevard County Parks & Recreation
2725 Judge Fran Jamieson Way
Building B, Suite 203
Viera, Florida 32940
Attn: Director

To Zoo:

EAST COAST ZOOLOGICAL SOCIETY
8225 N. Wickham Road
Melbourne, Florida 32940
Attn: President
Executive Director

Any notice so given, delivered, or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified above. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered, or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

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

18. INTERPRETATION, VENUE, AND WAIVER OF TRIAL BY JURY. This Agreement shall be interpreted under the laws of the State of Florida and the terms, rights, and remedies provided for under this Agreement, and at law or equity shall be those given under the laws of the State of Florida, or when the laws of the State of Florida are preempted by the laws of United States, under the laws of the United States of America.

The venue of any litigation arising out of this Agreement shall be in the Eighteenth Judicial Circuit Court in and for Brevard County, Florida and **ANY TRIAL SHALL BE NON JURY.**

19. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

20. EFFECTIVE DATE. As used herein, the term "Effective Date" shall mean the date the latter party executes this Agreement.

21. ATTORNEY'S FEES. In connection with any litigation, including appellate proceedings, arising out of or under this Agreement, each party in such litigation shall be responsible for its own costs and reasonable attorney's fees.

22. ENTIRE AGREEMENT. This Agreement (and all exhibits hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether written or oral. No covenants, agreements, terms, provisions, undertakings, statement, representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this agreement.

23. TIME. Time is of the essence of this Agreement.

24. CONSTRUCTION OF AGREEMENT. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be constructed either in favor of or against such party.

25. PARAGRAPH HEADINGS. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

26. MODIFICATION. No modification of this Agreement shall be binding on the County or the Zoo unless reduced to writing and signed by a duly authorized representative of the County and Zoo. The Parks and Recreation Department Director, or designee, shall have the authority to execute any modification to the Agreement.

27. APPLICATION. The terms, conditions, warranties, covenants, and obligations contained in the Agreement shall in every case apply to and be binding on the parties and their respective successors and assigns.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Executed this 8 day of Mar, 2024.

EAST COAST ZOOLOGICAL SOCIETY
OF FLORIDA, INC.

By: Beth Gitlin
Beth Gitlin, President

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

William W. Moore
Print Name

[Signature]
Witness

LAUREN BRAND
Print Name

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this 12th day of March, 2024 by
Jason Steele who is personally known to me or has produced identification.

[Notary Seal]



[Signature]
Notary Public

Catherine Louise Lively
Notary name printed, typed or stamped

My Commission Expires: 10-29-2024

ATTEST:

[Signature]
Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

[Signature]
Jason Steele, Chair

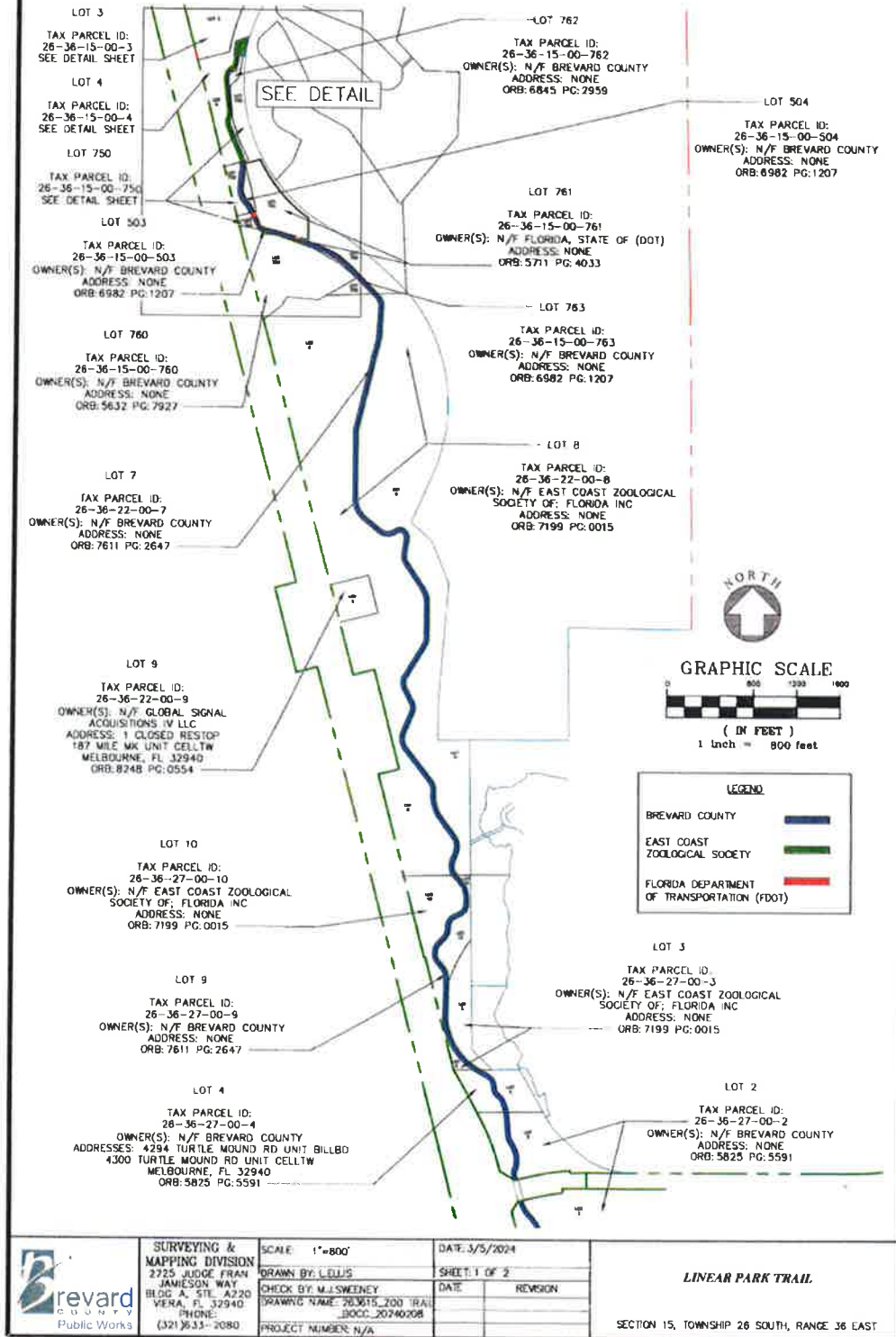
As approved by the Board on March 12, 2024

Reviewed for legal form and content

By: [Signature]
Justin Caron, Assistant County Attorney

LINEAR PARK TRAIL

Exhibit "A" Pg 1



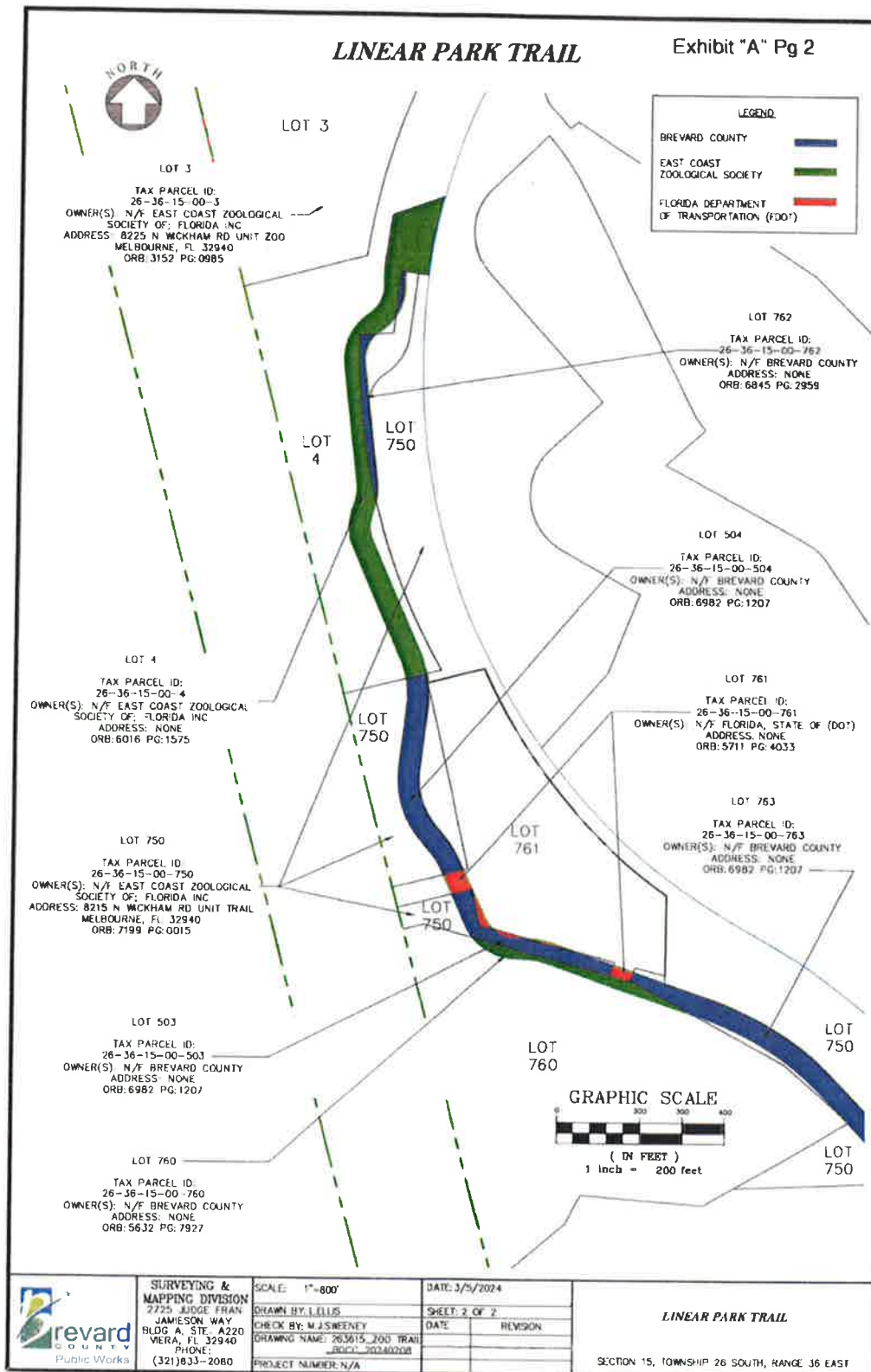


Exhibit B – Fire Rescue Utility Shed



Linear Trail Entrance, South end of Wildlife Way

