



LAKE COUNTY FOREST PRESERVES
www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: April 3, 2017
MEMO TO: Carol Calabresa, Chair
Planning Committee
FROM: Randall L. Seebach
Director of Planning and Land Preservation

Agenda Item# 9.8

RECOMMENDATION: Recommend approval of a Resolution approving an Easement Agreement with Abbott Laboratories at Ethel's Woods Forest Preserve, allowing the District to perform restoration activities along North Mill Creek.

STRATEGIC DIRECTIONS SUPPORTED: Conservation, Leadership

FINANCIAL DATA: There are no costs associated with the acquisition of the easement agreement. All costs associated with the restoration work have been approved as part of the FY 2016/2017 Capital Improvement Plan for the Ethel's Woods North Mill Creek Restoration Project.

BACKGROUND: The District is involved in an extensive restoration project at Ethel's Woods Forest Preserve involving modification of an earthen dam at Rasumssen Lake and restoration of a portion of North Mill Creek. As part of a more comprehensive analysis, staff is recommending that restoration activities include riparian wetlands along North Mill Creek within a small portion of property owned by Abbott Laboratories. To complete the construction, restoration and maintenance of the riparian wetlands, the District requires an easement agreement for access to 6.5 acres of Abbott Laboratories property.

The easement premises is located near the northwest section of Ethel's Woods Forest Preserve where Mill Creek enters Forest Preserve property. The District owns property immediately adjacent to the east of the 6.5-acre Abbott property. Execution of this easement agreement will provide the District legal access to North Mill Creek and the associated riparian wetlands owned by Abbott Laboratories for restoration purposes.

As a condition of granting the easement, the District will be responsible for all costs associated with the restoration of the subject property and shall terminate the agreement on the date on which all the regulatory agencies including, but not limited to, U.S Army Corps of Engineers, Illinois Environmental Protection Agency, Lake County Stormwater Management Commission, and Illinois Department of Natural Resources Office of Water Resources, determine the restoration has been completed in accordance with all applicable permits.

REVIEWED BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR APRIL MEETING
APRIL 11, 2017**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith "A Resolution approving an easement agreement with Abbott Laboratories for restoration activities along North Mill Creek at Ethel's Woods Forest Preserve," and requests its approval.

PLANNING COMMITTEE:

Date: 4/3/17 Roll Call Vote: Ayes: ___ Nays: ___
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH ABBOTT
LABORATORIES FOR RESTORATION ACTIVITIES ALONG NORTH MILL CREEK
AT ETHEL'S WOODS FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the "District") owns property known at Ethel's Woods Forest Preserve (the "Property"); and

WHEREAS, the Planning Committee (the "Committee") of the Lake County Forest Preserve District (the "District") has determined that it is necessary and desirable to acquire an easement from Abbott Laboratories (the "Owner") for restoration activities associated with the North Mill Creek Channel Restoration at the Property; and

WHEREAS, the District's Department of Planning and Land Preservation has negotiated an agreement (the "Easement Agreement") with the Owner pursuant to which the District would obtain the Easement Agreement from the Owner, in substantially the form attached hereto; and

WHEREAS, it is in the best interests of the District to approve the Easement Agreement in substantially the form attached hereto;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as part of this Resolution by this reference.

Section 2. Approval of Easement Agreement. The Easement Agreement is hereby approved in substantially the form attached hereto. The President and Secretary of the District are hereby authorized and directed to execute and attest to the Easement Agreement.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2017

AYES:

NAYS:

APPROVED this ____ day of _____, 2017

ATTEST:

Ann B. Maine, President
Lake County Forest Preserve District

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

Matthew Norton
Burke, Warren, MacKay
& Serritella, P.C.
330 N. Wabash
21th Floor
Chicago, IL 60611

Above Space For Recorder's Use Only

TEMPORARY WETLAND RESTORATION EASEMENT AGREEMENT

This TEMPORARY WETLAND RESTORATION EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2017 by and between ABBOTT LABORATORIES, an Illinois corporation ("Grantor") and LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate organized and existing under the Illinois Downstate Forest Preserve Act, 70 ILCS 805/0.001 et seq. ("Grantee").

RECITALS:

- A. Grantee is the owner of approximately 467 acres of land located in the area south of Route 173, east of Route 45, west of Crawford Road and north of Kelly Road, all in Newport and Antioch Townships, Lake County, Illinois (the "Property"). Portions of the Property are generally depicted as the "Forest Preserve Property" and "Forest Preserve Easement" on Exhibit A.
- B. Grantor is the owner of certain real property located in Newport and Antioch Townships, Lake County, Illinois (the "Grantor Property") and is legally described on Exhibit B attached hereto and made a part hereof.
- C. The Grantor Property includes, but is not limited to, the "Easement Area" generally depicted on Exhibit A attached hereto and made a part hereof.
- D. Grantor desires to grant, and Grantee desires to receive, upon and subject to the terms and conditions herein provided, a temporary easement over and across the Easement Area, for purposes of restoring a portion of the Property known as "North Mill Creek" and associated riparian wetlands, as described below.

NOW, THEREFORE, in consideration of the foregoing the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1) Recitals Incorporated by Reference. The provisions of the above recitals are by this reference herein incorporated as if they had been set forth in the text of this Agreement.

- 2) Grant of Easement. Subject to the terms of this Agreement and to all matters and conditions of record, Grantor hereby grants, gives and conveys to Grantee for the purposes herein stated and for no other purpose, a temporary easement on, through, across and over the Easement Area for the purpose of constructing, maintaining, operating, and/or supervising the restoration of North Mill Creek and associated riparian wetlands for the benefit of the Property and other properties owned by Grantee (the "Work"), which Work shall be at Grantee's sole cost and expense and shall be subject at all times to any laws, statutes, ordinances or regulations governing such Work (collectively, "Laws"). Grantee shall use commercially reasonable efforts to commence and complete the Work in a diligent, expeditious manner. This Agreement and the rights granted hereunder shall terminate as of the earlier to occur of the following: a) the date on which all the regulatory authorities, including but not limited to U.S. Army Corps of Engineers, Illinois Environmental Protection Agency, Lake County Stormwater Management Commission, and Illinois Department of Natural Resources Office of Water Resources, determine the Work has been completed in accordance with all Laws; b) the parties mutually agree the easement is no longer necessary; c) seven (7) years after the date of this Agreement, unless extended by the written agreement of both parties; or d) one (1) year from the date of this Agreement in the event that Grantee has not commenced the Work within that time. Prior to performing any Work on the Grantor Property, Grantee shall provide the plans for Grantor's approval, such approval not to be unreasonably withheld. Grantee shall keep Grantor reasonably informed of the progress of the Work. Promptly after the termination of this Agreement, Grantee shall record a release of this Agreement in a form reasonably acceptable to Grantor.
- 3) Reservation of Rights. Subject to the terms of this Agreement, Grantor reserves the following rights with respect to the Easement Area:
- a) The non-exclusive right to use the Easement Area for any reason and in such manner as Grantor shall deem proper, in its sole and absolute discretion; provided that such uses shall not be inconsistent with the purposes recited in Paragraph 2 of this Agreement and shall not unreasonably interfere with Grantee's use of the Easement Area;
 - b) The right to grant additional drainage, access, utility or other licenses or easements over, upon and under, and the right to grant others the right to use, the Easement Area; provided that such uses are not inconsistent with the purposes recited in Paragraph 2 of this Agreement and do not unreasonably interfere with Grantee's use of the Easement Area; and
 - c) The right to construct roadways, pedestrian paths, or other access corridors across portions of the Easement Area at any time without compensation therefor to Grantee.
- 4) Damage to Grantor's Property or Improvements; Restoration. Upon completion of the Work, Grantee shall, to the extent reasonably necessary and at Grantee's sole cost and expense, promptly restore any portion of the Easement Area disturbed or adversely affected by the Work to the same or better condition than that existing prior to commencement of the Work. Grantee will ensure the function and stability of any existing agricultural drain tiles in the Easement Area at the time of the completion of the Work by implementing any measures deemed necessary by a licensed professional engineer at the sole cost and expense of the Grantee.
- 5) Indemnity.
- a) Grantee assumes sole and complete responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may arise from the negligent use of the Easement Area by Grantee, including its employees, contractors and agents.
 - b) Grantee, for itself and for those claiming through Grantee, shall indemnify Grantor, its officers,

directors, and employees, (collectively, the "Grantor Indemnitees") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Grantor Indemnitees in connection therewith) and for loss of life, injury to persons or damage to property that may arise from the Work or the negligent use of the Easement Area by Grantee, except to the extent arising solely from the negligence or willful and wanton misconduct of Grantor.

- 6) Covenants of Grantee. Grantee covenants and agrees not to transfer, assign, license or permit any other party or entity any right or interest under this Agreement other than to any governmental successors or assigns of Grantee owning the Property at the time thereof (provided that the Property is being used for forest preserve district or conservation purposes at the time thereof). Except as expressly provided to the contrary herein, Grantee has no rights to construct any improvements on or within the Easement Area or to use the Easement Area for any purposes other than the Work.
- 7) Non-Interference by Grantee. Grantee hereby agrees not to interfere with the use of any existing license or encumbrance on, under, above or across the Easement Area.
- 8) Compliance with Laws. This Agreement does not abrogate or supersede any Laws requiring the parties to obtain permits, licenses, inspections or approvals related to the Work. Grantee shall be responsible (at its cost) for obtaining any permits, licenses, inspections or approvals required for the Work and shall be solely responsible for compliance with all applicable Laws. Upon request, Grantee shall deliver to Grantor copies of any such permits, licenses, inspections or approvals.
- 9) No Warranties, Integration. Grantee acknowledges that Grantee has not been induced in the making, execution and delivery of this Agreement by any representations, statements, warranties or agreements of Grantor. Grantee acknowledges that it has inspected and completed any due diligence that it requires to be knowledgeable about the condition of the Easement Area. Grantee acknowledges, agrees and accepts the condition of the Easement Area in its "as-is" condition, with any and all faults and defects, without any express or implied representation or warranty by Grantor and Grantee hereby waives and releases Grantor from any claims related to the condition of the Easement Area. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.
- 10) Notices. Unless otherwise expressly provided herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally, by overnight courier or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor:

Abbott Laboratories
Department 315
Building AP52S South
200 Abbott Park Road
Abbott Park, Illinois 60064-6212
Attn: Senior Director Global Real Estate

with a copy to:

Abbott Laboratories
Department 032RA
Building AP6A-2
100 Abbott Park Road
Abbott Park, Illinois 60064

Attn: Divisional Vice President and Associate General Counsel
(Attn: Real Estate Matter)

To Grantee:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, Illinois, 60048
Attn:

Or such other address or person as either party from time to time shall designate by written notice to the other. Personal delivery shall include delivery by commercial messenger service or overnight courier. Service by mail shall be deemed effective on the earlier of (i) actual receipt or (ii) three (3) business days after posting.

- 11) Covenants Running with the Land. The parties shall cause this Agreement to be recorded against the Grantor Property. The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement are easements, rights, restrictions, agreements, and covenants running with the Easement Area and, subject to the limitations of Section 6 above, are binding upon and inure to the benefit of the Grantee, its successors and assigns, and all subsequent owners of the Easement Area, or any portion thereof.
- 12) Transfer of Easement Area. Grantor may sell, assign, transfer, convey or encumber its fee simple title to the Easement Area or any part thereof as part of Grantor's sale, transfer or conveyance of its property surrounding the Easement Area, subject in all cases to the terms of this Agreement. The term "Grantor" shall mean the party or parties owning the fee simple interest in and to the Easement Area (or any portion thereof) at any time and from time to time.
- 13) Modification. Grantor and Grantee shall have the right to modify this Agreement from time to time upon the mutual agreement of the parties. In such event, this Agreement shall be modified by a recorded amendment hereto.

[Signature Page Follows]

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____

Name: _____

Title: _____

ABBOTT LABORATORIES

By: _____

Name: _____

Title: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Lake County Forest Preserve District, a body politic and corporate organized and existing under the Illinois Downstate Forest Preserve Act, 70 ILCS 805/0.001 et seq., and personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as _____ of said body politic and corporate, as his/her free and voluntary act, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ___ day of _____, 2017.

[Seal]

Notary Public

My commission expires: _____

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Abbott Laboratories, an Illinois corporation, and personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as _____ of said corporation company, as his/her free and voluntary act, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ___ day of _____, 2017.

[Seal]

Notary Public

My commission expires: _____

EXHIBIT A





Depiction of Easement Area, Forest Preserve Property, and Forest Preserve Easement

**Exhibit
A**

Lake County Forest Preserve District
1859 W Winchester Rd
Libertyville, IL 60048
847-387-6840
www.lcfd.org



Legend

-  Forest Preserve Property
-  Forest Preserve Easements
-  Abbott Property
-  Easement Area

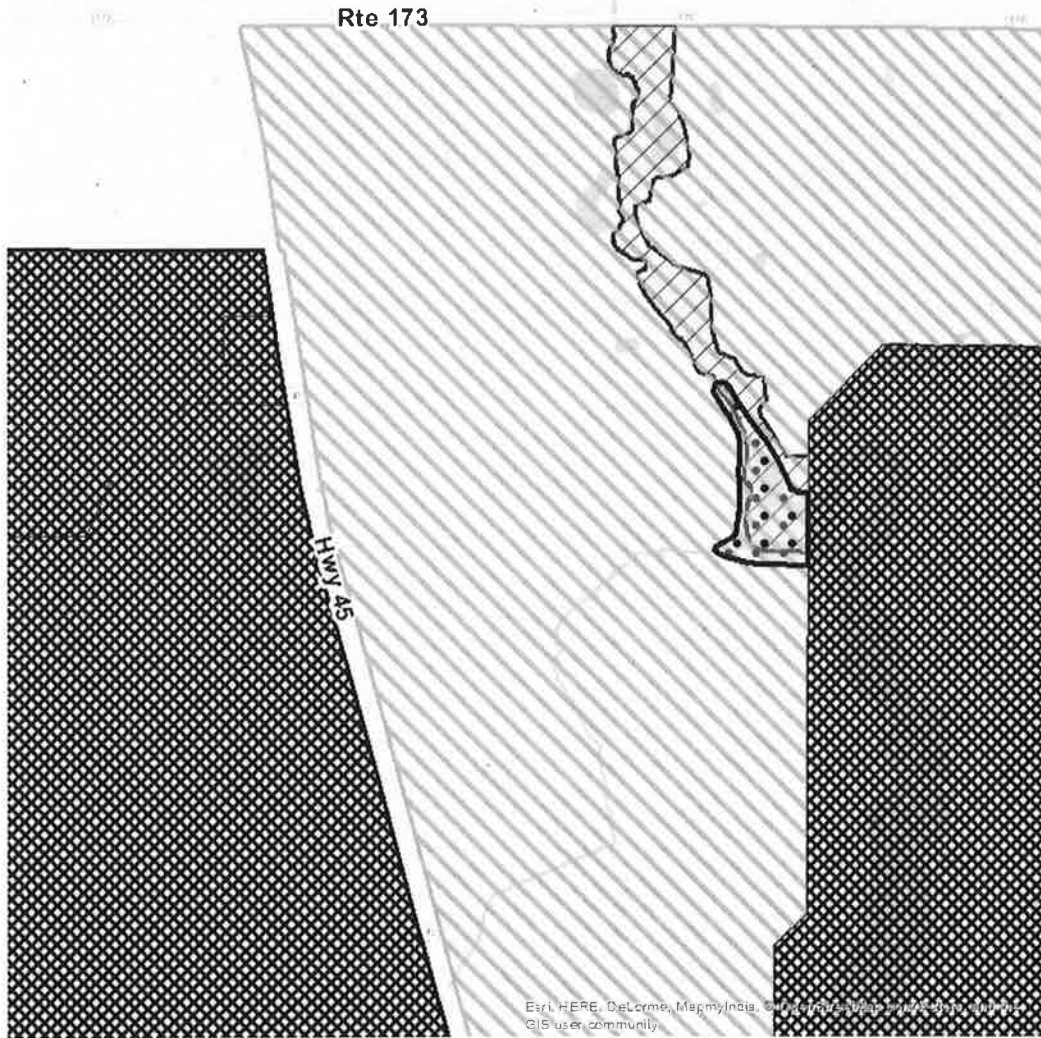


Courtesy Copy Only.
Property boundaries indicated are provided
for general location purposes. Wetland
and flood limits shown are approximate and
should not be used to determine setbacks for
structure or as a basis for purchasing property.

2015 Aerial Photo

Prepared using information from:
Lake County Department of Information
& Technology - GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373

Map Prepared 19 January 2017



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the
GIS user community

EXHIBIT B

Legal Description of Grantor Property

[To be attached]

Property Index Numbers: 02-24-200-004
 02-13-400-005