



LAKE COUNTY FOREST PRESERVES

www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: June 26, 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 Agreement with KZF Stack Real Estate, LLC, related to the Des Plaines River Trail within the proposed Lincolnshire Trails Subdivision, located on the north side of Riverside Road, east of Milwaukee Avenue, adjacent to Edward L. Ryerson Conservation Area.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections

FINANCIAL DATA: There is no financial impact.

BACKGROUND: The District owns a trail easement within two parcels located north of Riverside Road in Lincolnshire (the "Subject Property") and has constructed a segment of the Des Plaines River Trail (DPRT), approximately 1,880 lineal feet, within the easement. When it granted the easement to the District, the grantor reserved the right to locate three future "points of access" from the Subject Property, across the DPRT, to Rivershire Pond adjacent to the DRPT.

Since at least 2008, the District has been contacted periodically by prospective purchasers and developers of the Subject Property. In fall 2016, KZF Stack Real Estate, LLC (KZF Stack) informed the District of its plans to develop a residential project (to be called "Lincolnshire Trails") within the Subject Property and requested that it be allowed to exercise its reserved rights by crossing the DPRT with two storm sewer pipes that will drain from the Lincolnshire Trails subdivision to Rivershire Pond. In addition to the two crossings, KZF Stack desires to do a small amount of grading within the District's easement area and to lower the elevation of a short segment of the DPRT, both to meet its compensatory storage requirements.

In exchange for authority to make these changes, KZF Stack has agreed to

- expand the easement as necessary to correct a small encroachment of the DPRT onto the Subject Property, outside the existing easement (currently estimated to be approximately 250 square feet);
- expand the easement as necessary (currently estimated to be approximately 3,300 square feet) near the southeast portion of the Subject Property, and to make certain public safety improvements within that new area, specifically (i) increasing the radius of the DPRT at that location and (ii) removing an approximately 550-foot long portion of the DPRT from the Riverside Road right of way;

- provide a striped crossing of Riverside Road in line with the District's trail easement to the south behind Sedgebrook Senior Care Development;

KZF Stack is preparing the legal description necessary to address the encroachment of the DPRT and to specifically define the area necessary for the public safety improvements discussed above. Staff recommends approval of the Agreement, subject to the parties' agreement on such legal description.

REVIEW BY OTHERS: Executive Director, Corporate Counsel

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR JULY MEETING
JULY 12, 2017**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** present herewith “A Resolution approving an Agreement with KZF Stack Real Estate, LLC related to the Des Plaines River Trail at Edward L. Ryerson Conservation Area,” and requests its approval.

PLANNING COMMITTEE:

Date: 6-26-17 Roll Call Vote: Ayes: ___ Nays: ___
 Voice Vote Majority Ayes; Nays: 0

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

**A RESOLUTION APPROVING AN AGREEMENT WITH KZF STACK
REAL ESTATE, LLC, RELATED TO THE DES PLAINES RIVER TRAIL
AT EDWARD L. RYERSON CONSERVATION AREA**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns an easement (the “Easement”) on which a portion of the Des Plaines River Trail (the “DPRT”) is located, in Lake County, Illinois, that is part of the Edward L. Ryerson Conservation Area; and

WHEREAS, the underlying fee simple ownership of the property within which the Easement is located (the “Subject Property”) is held by KZF Stack Real Estate, LLC (the “Owner”); and

WHEREAS, the Owner has contacted the District to (i) exercise certain reserved rights under the Easement to install two points of access, specifically, two storm sewer pipes that will cross the Easement and the DPRT therein, and (ii) request permission for certain grading and other work within the Easement area to lower the elevation of a short segment of the DPRT to meet its compensatory storage requirements (collectively, the “Stormwater and Grading Work”); and

WHEREAS, the District and Owner have negotiated an agreement, currently in the form attached hereto (the “Agreement”), pursuant to which the District would agree to the Stormwater and Grading Work and Owner would agree to (i) expand the Easement premises (a) to accommodate the trail reconfiguration and (b) to add the encroaching portion of the DRPT to the easement and (ii) perform certain relocation and reconfiguration work to improve public safety of the existing DPRT located in the southeast portion of the Subject Property; and

WHEREAS, it is in the best interests of the District to approve the Agreement, subject to this Resolution; and

WHEREAS, pursuant to Sections 5 and 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/5 and 6, the District is authorized to acquire easements in real property;

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 Agreement. The District’s Executive Director (or his designee) and the District’s Corporate Counsel are authorized and directed to approve the legal description, to be prepared by the Owner, for the expanded Easement, to address the public safety and encroachment issues identified above. Upon such approval, the Executive Director and the Secretary are hereby authorized and directed, on behalf of the District, to execute and attest to the Agreement and all documents necessary to complete the transactions contemplated herein, provided that such documents are first reviewed and approved by the District's Corporate Counsel.

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

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

**This Document prepared by
and after recording return to:**

Matthew E. Norton, Esq.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave.
21st Floor
Chicago, IL 60611

This space for Recorder's use only

**Agreement
between
Lake County Forest Preserve District
and
KZF Stack, LLC
regarding
Amendment to Easement
and
Construction and Restoration of Portions of Des Plaines River Trail**

Dated as of _____, 2017

**Agreement
between
Lake County Forest Preserve District
and
KZF Stack, LLC
regarding
Amendment to Easement
and
Construction and Restoration of Portions of Des Plaines River Trail**

This Agreement ("Agreement") is entered into as of the ____ day of _____, 2017 (the "Effective Date"), by and between the **Lake County Forest Preserve District**, a body politic and corporate organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/001 *et seq.* (the "**District**"), and **KZF Stack, LLC**, an Illinois limited liability company ("**KZF Stack**") (the District and KZF Stack are sometimes referred to, collectively, as the "**Parties**" or individually as a "**Party**"). In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

Section 1. Recitals.

A. Pursuant to a Judgment Order entered on August 31, 1987, in Case No. 86 ED 19 (the "Action"), and recorded in the office of the Lake County Recorder of Deeds as Document No. 3143807 (the "Order"), the District owns a perpetual easement for forest preserve purposes, including constructing, maintaining and operating a public trail (the "Easement") over, upon, and across the real property legally described in the Order as "Parcel No. P-207" and generally depicted on Exhibit A-1 attached hereto (the "Original Easement Premises").

B. Pursuant to paragraph 6 of the Order, the owner of the Original Easement Premises reserved the right to designate up to three (3) points of access to Rivershire Pond (the "Reserved Right"). KZF Stack is the successor in interest to the defendants in the Action and is the fee simple owner of the Original Easement Premises and other adjacent property (the "Subject Property"). The Subject Property is generally depicted on Exhibit A-1 attached hereto.

C. KZF Stack desires to develop the Subject Property with a residential development, to be called "Lincolnshire Trails," in accordance with the development plans (the "Development Plans") listed on Exhibit B (the "Development"). Such Development will require the installation of drainage facilities to allow stormwater drainage from "Detention Basin 1" and "Detention Basin 2" (the "Detention Areas") into Rivershire Pond as depicted and described on Sheets seven (7) and eight (8) of the Development Plans.

D. The District has constructed or caused construction of the "public trail system" referred to in the Order (the "Trail"). The Trail is used by the public for walking, running, and bicycling. The Trail is generally depicted on Exhibit A-1.

E. KZF Stack, as the current fee simple owner of the Original Easement Premises, desires to exercise the Reserved Right by designating two (2) points of access across the Trail for stormwater drainage from the Development to Rivershire Pond, in the locations generally depicted on Exhibit A-1 as the "Points of Access."

F. To promote public safety, the Parties desire to (i) reconfigure and relocate a portion of the Trail at or near the southeast corner of the Subject Property, which reconfiguration and relocation is depicted as the "Trail Reconfiguration Addition" in Exhibit A-2, (ii) remove a portion of the Trail, which removal is depicted as the "Trail Reconfiguration Removal" in Exhibit A-2; and to (iii) abandon that portion of the Trail currently within the right of way of Riverside Road (except where the Trail crosses Riverside Road perpendicularly to connect to additional District property on the south side of Riverside Road), which is depicted in Exhibit A-2 as "Trail Reconfiguration Abandonment," all as generally depicted in Exhibit A-2.

G. When the Trail was constructed, a portion of the Trail was inadvertently constructed, in part, in a location that is located outside of the Original Easement Premises, but within the Subject Property. The portion of the Trail encroaching on the Subject Property is generally depicted on Exhibit A-2 as the "Encroaching Trail Portion."

H. The Parties desire to expand the Original Easement Premises to (i) accommodate the Trail Reconfiguration Addition and (ii) add the Encroaching Trail Portion to the Original Easement Premises.

Section 2. Amendment of Easement to Create Expanded Easement Premises.

As of the Effective Date, the Easement is, and will be, located within that portion of the Subject Property legally described on Exhibit C attached hereto (the "Expanded Easement Premises"). The portion of the Expanded Easement Premises that has been added to the Original Easement Premises is generally depicted on Exhibit A-2 as the "Additional Easement Premises." Thus, the Expanded Easement Premises includes the Original Easement Premises and the Additional Easement Premises.

Section 3. Designation of Stormwater Points of Access.

Pursuant to its Reserved Right under the Order, KZF Stack hereby designates, as two Points of Access to Rivershire Pond, the stormwater drainage pipe that drains from Detention Basin 1 into Rivershire Pond (as depicted on Sheet 7 of the Development Plans) and the stormwater drainage pipe that drains from Detention Basin 2 into Rivershire Pond (as depicted on Sheet 8 of the Development Plans). These two Points of Access are also generally depicted on Exhibit A-1. Nothing in this Agreement will be deemed to limit KZF Stack's right to access the Trail or any other District Property in the same manner as any other member of the public.

Section 4. Construction Work.

A. KZF's Rights and Obligations. In accordance with the Development Plans, KZF Stack:

- i. must notify the District, in writing, at least ten (10) days prior to the date that KZF Stack intends to perform any work within the Expanded Easement Premises;
- ii. must post, at least seven (7) days prior to performing any work within the Expanded Easement Premises (including any future maintenance or replacement of the storm sewer pipes at the Points of Access), clearly visible signs on both sides of the Trail notifying the public using the Trail of such upcoming Trail work and any period during which the Trail will be closed (the "Notice Signs");

- iii. while any work is being performed on the Trail (including any future maintenance or replacement of the storm sewer pipes at the Points of Access), must place barricades and "trail closed" signs on the Trail preventing public access to that portion of the Trail upon which work is being performed (collectively, the "Barricades");
- iv. must remove any and all Notice Signs and Barricades, within one day after the work necessitating the Notice Signs and Barricades has been completed;
- v. may remove the cross-hatched portion of the Trail near the northwest corner of the Subject Property and depicted on Sheet 7 of the Development Plans and grade such portion of the Expanded Easement Premises to satisfy compensatory stormwater requirements, as depicted in the Development Plans (the "Removal Work"), and, if KZF Stack does so, it shall replace that portion of the removed Trail with a twelve (12) foot-wide, aggregate trail and restore the Expanded Easement Premises, as depicted in the Development Plans (the "Restoration Work"), and shall commence and complete the Removal Work and the Restoration Work within a three-day period;
- vi. must, no later than two (2) years after the Effective Date, complete the Trail Reconfiguration Addition and Trail Reconfiguration Removal, and restore the portion of the Expanded Easement Premises upon which the removed Trail was located, in accordance with the Development Plans;
- vii. must not commence the Trail Reconfiguration Removal until it has completed the Trail Reconfiguration Addition; and
- viii. must (i) notify the District after completion of the Restoration work, the Trail Reconfiguration Addition, and the Trail Reconfiguration Removal, to allow the District to inspect such work for purposes of ensuring that the work has been completed in accordance with the Development Plans and (ii) withhold final payment from its contractor or contractors performing the work until the District determines, and notifies KZF Stack in writing, that the work has been completed in accordance with the Development Plans, which determination will not be unreasonably withheld or delayed by the District.

B. Insurance. Prior to commencing any work within the Expanded Easement Premises, KZF Stack shall provide certificates and policies of insurance in forms, evidencing general liability and other insurance coverages and limits, and issued by companies, that are reasonably acceptable to the District. The District shall be an additional insured under such coverages with respect to any claim for personal injury, death, or property damage against the District arising from the negligent acts or omissions of KZF Stack or any of its contractors ("Claims"). Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to District. KZF Stack shall, at all times while any work on the Expanded Easement Premises is being performed, shall maintain and keep in force, or cause to be maintained and kept in force, at no expense to the District, the insurance coverages described above.

C. **Indemnification.** KZF Stack shall, and shall cause its contactors to, defend, indemnify, and hold harmless the District against and from any Claim filed against the District, all at no cost.

D. **Prevailing Wage Act.** The District hereby notifies KZF Stack and its contractors of their obligations, if any, under the Illinois Prevailing Wage Act (820 ILCS 130), to pay prevailing rates of wages to all construction, demolition, or other work that is covered by such Act, including any covered work on the Trail.

Section 5. Maintenance Obligations.

KZF Stack shall maintain the storm sewer pipes at the Points of Access so that they do not unreasonably disrupt the Trail or the public's use thereof and the District has no obligation for any such maintenance. After completion of the Restoration Work, the Trail Reconfiguration Addition, and the Trail Reconfiguration Removal, KZF Stack has no obligation to maintain any portion of the Trail.

Section 6. Binding Effect; No Third Party Beneficiaries.

The Easement (with the Expanded Easement Premises) shall remain in full force and effect in perpetuity. KZF Stack shall record this Agreement against the Subject Property. This Agreement shall run with the land and, accordingly, KZF Stack's rights and obligations under this Agreement (including its obligation to perform the Restoration Work, the Trail Reconfiguration Addition, and the Trail Reconfiguration Removal) shall bind and inure to the benefit of all future fee simple owners of the Subject Property and the District's rights and obligations under this Agreement, with respect to the Expanded Easement Premises, shall bind and inure to the benefit of the District, including any successor Boards of Commissioners. However, (i) after the Restoration Work, Trail Reconfiguration Addition, and Trail Reconfiguration Removal have been completed in accordance with this Agreement, upon written request from KZF Stack, the District shall execute an acknowledgement, in a recordable form prepared by KZF Stack and reasonably acceptable to the District, that the Restoration Work and Trail Reconfiguration Addition, and Trail Reconfiguration Removal have been completed in accordance with this Agreement and (ii) if KZF Stack conveys all of its interest in the Subject Property to an owners association or similar entity, then, effective upon such conveyance, KZF Stack will be released of all liability under this Agreement and all of its liability and obligations under this Agreement will be borne by such association or entity. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation will be made, or be valid, against the Parties.

Section 6. Default and Enforcement.

A. **Default.** If a Party (the "Defaulting Party") fails to perform its obligations under this Agreement, then it will be in default of this Agreement if (i) the other Party sends written notice to the Defaulting Party describing such failure in sufficient detail so that the Defaulting Party may remedy such failure and (ii) the Defaulting Party has not, within 30 days after it has received such notice, either (a) cured such failure or (b) if such failure cannot be reasonably cured within such 30-day period, commenced and continuously and diligently pursued a cure of such failure.

B. **Enforcement; Venue.** If a Defaulting Party is in default of this Agreement, the other Party may, in law or in equity, by suit, action, mandamus or any other proceeding,

including, without limitation, specific performance, enforce or compel the performance of this Agreement. Venue for any such suit, action, mandamus, or other proceeding will be the Circuit Court of Lake County, Illinois.

C. Prevailing Party. In the event of a judicial proceeding brought by one Party against the other Party the prevailing Party in the judicial proceeding will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in connection with the judicial proceeding and in connection with the enforcement of its rights under this Agreement.

Section 7. General Provisions.

A. Authority to Execute. Each person executing this Agreement represents, warrants, and covenants that, as of the Effective Date, he or she has the right, power, and authority, to enter into, execute, and deliver this Agreement and to perform (or cause the performance of) the obligations of the Party on whose behalf he or she is executing this Agreement.

B. Notices. All notices required or permitted to be given under this Agreement shall be given by the Parties in writing by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section. The address of any Party may be changed by written notice to the other Parties. Notice will be deemed to have been given and received upon actual receipt. Notices and communications to the Parties will be addressed to, and delivered at, the following addresses:

- If to the District: Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, IL 60048
Attention: Executive Director

- with a copy to: Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., 21st Floor
Chicago, IL 60611
Attention: Matthew E. Norton

- If to KZF Stack: KZF, LLC

- with a copy to: _____

Nothing in this Section is intended to invalidate any notice that is actually received.

C. Time of the Essence. Time is of the essence in the performance of all obligations of this Agreement.

D. Entire Agreement; Interpretation. This Agreement, and the Order, constitute the entire agreement between the Parties, superseding any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement. Any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

E. Amendments and Modifications. No amendment or modification to this Agreement will be effective unless and until it is reduced to writing and approved and executed by all Parties to this Agreement in accordance with all applicable statutory procedures.

F. Counterparts, Separate Signature Pages, Facsimile or Electronic Signatures. This Agreement may be executed in several counterparts, by separate signature pages, each of which may be deemed an original, and all such counterparts and separate signature pages together shall, together, constitute one and the same Agreement. In addition, this Agreement may be executed and delivered by facsimile or portable document format (.pdf) signature, such that execution of this Agreement by facsimile or portable document format (.pdf) signature shall be deemed effective for all purposes as though this Agreement was a "blue ink" original.

[Signature Page Follows]

KZF Stack, LLC

Lake County Forest Preserve District

By: _____

By: _____
Ann B. Maine, President

Witness:

Attest:

Julie Gagnani
Board Secretary

Exhibit A-1

General Depiction of the Original Easement Premises, Subject Property, Trail, and Points of Access

Exhibit A-1

Legend

-  Original Easement Premises
-  Subject Property
-  Trail
-  Points of Access



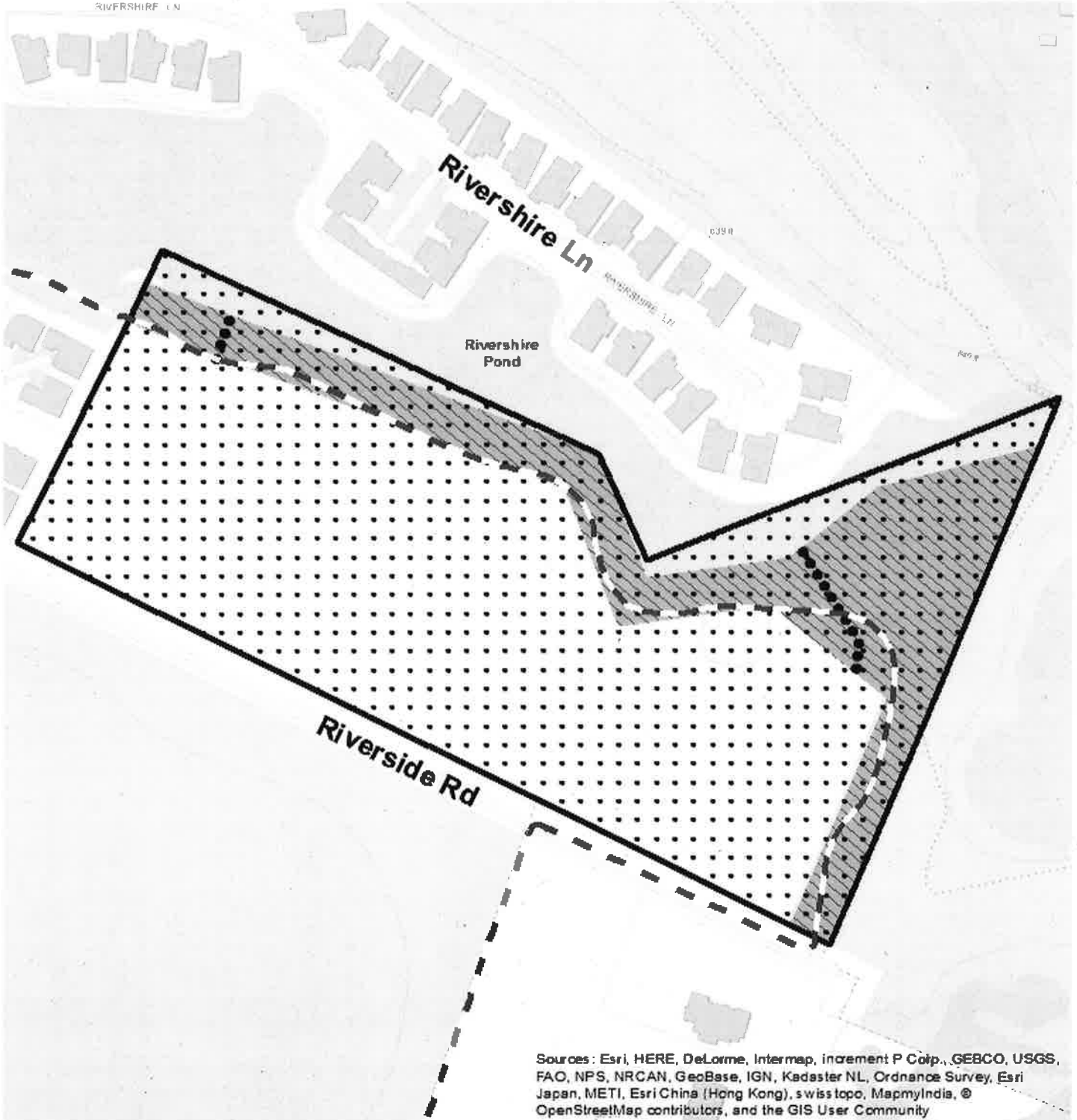
Lake County Forest Preserve District
 1899 W Winchester Rd
 Libertyville, IL 60048
 847-367-6640
 www.lcfd.org

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.

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

2015 Aerial Photo

Map Prepared 21 June 2017











Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Exhibit A-2

**Trail Reconfiguration Addition, Trail Reconfiguration Abandonment, Trail Reconfiguration
Removal, Encroaching Trail Portion, and Additional Easement Premises**

Exhibit A-2

Legend

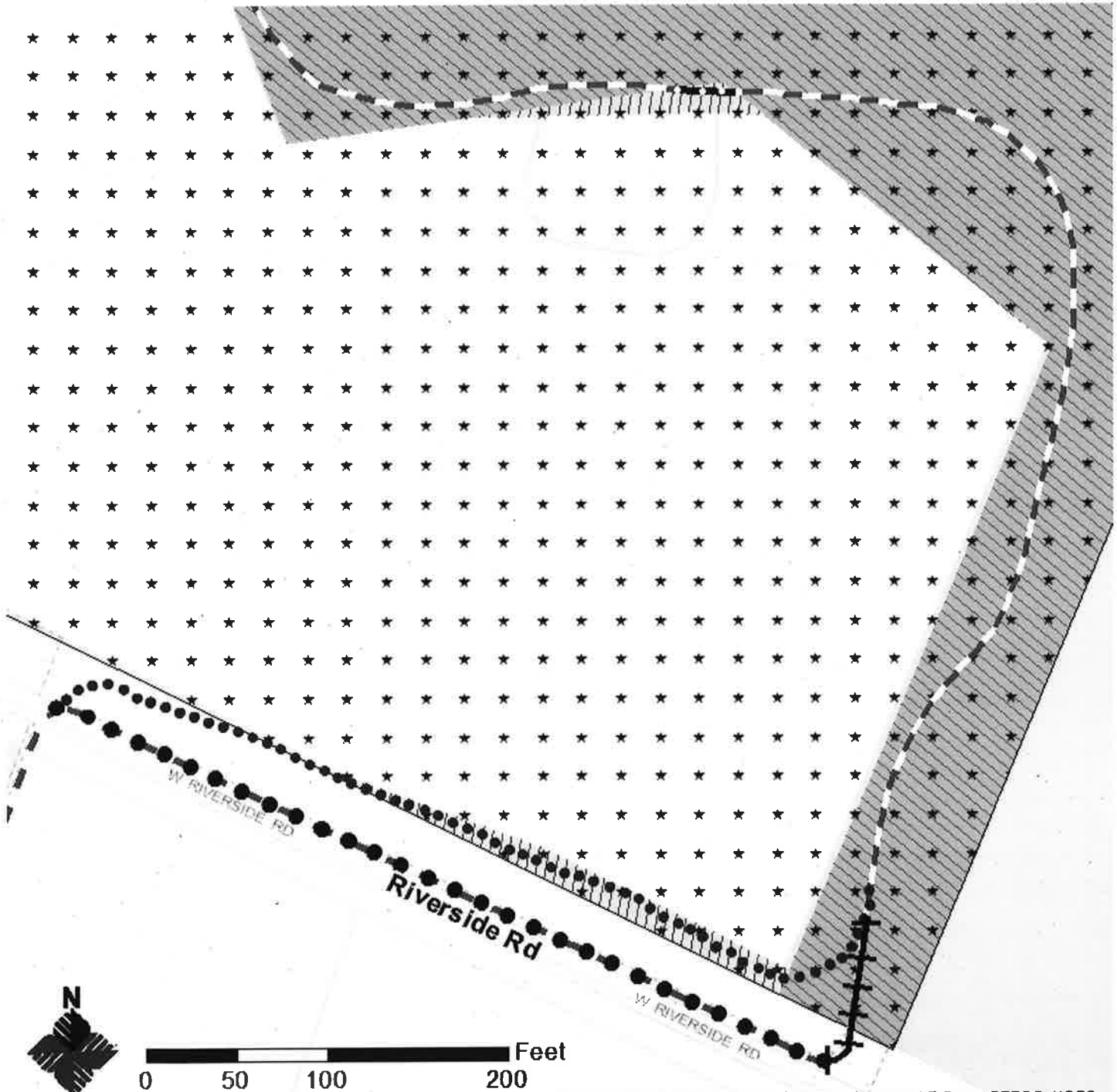
-  Subject Property
-  Original Easement Premises
-  Additional Easement Premises
-  Trail
-  Encroaching Trail Portion
-  Trail Reconfiguration Addition
-  Trail Reconfiguration Abandonment
-  Trail Reconfiguration Removal

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.

Lake County Forest Preserve District
 1899 W Winchester Rd
 Libertyville, IL 60048
 847-367-6640
 www.lcfd.org

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

2015 Aerial Photo Map Prepared 22 June 2017



Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Exhibit B

Development Plans
Prepared by Manhard Consulting, Ltd.

INDEX	LATEST REVISED DATE
1. TITLE SHEET	06/05/2017
2. INDEX OF SHEETS	06/05/2017
3. EXISTING CONDITIONS AND DEMOLITION PLAN – WEST	06/05/2017
4. EXISTING CONDITIONS AND DEMOLITION PLAN – EAST	04/11/2017
5. GRADING PLAN – WEST	06/05/2017
6. GRADING PLAN – EAST	06/05/2017
7. GENERAL LAYOUT – WEST	06/05/2017
8. GENERAL LAYOUT – EAST	03/30/2017
9. PLAN AND PROFILE – WOODLANDS TRAIL – STA 0+00 TO 4+50	03/06/2017
10. PLAN AND PROFILE – WOODLANDS TRAIL – STA 4+50 TO 11+18	03/06/2017
11. PLAN AND PROFILE – SANITARY SEWER	01/27/2017
12. PLAN AND PROFILE – OFFSITE WATERMAIN	06/05/2017
13. ENTRANCE GRADING DETAIL	01/27/2017
14. SOIL EROSION AND SEDIMENTATION CONTROL PLAN – WEST	06/05/2017
15. SOIL EROSION AND SEDIMENTATION CONTROL PLAN – EAST	06/05/2017
16. SOIL EROSION AND SEDIMENTATION CONTROL PLAN – DETAILS	03/30/2017
17. CONSTRUCTION DETAILS	03/06/2017
18. CONSTRUCTION DETAILS	03/06/2017
19. CONSTRUCTION DETAILS	03/06/2017
20. SPECIFICATIONS	03/06/2017

Exhibit C

Legal Description of Expanded Easement Premises