



LAKE COUNTY FOREST PRESERVES
www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: August 6, 2018

MEMO TO: Carol Calabresa, Chair
Planning Committee

Agenda Item# 9.7

FROM: James L. Anderson
Director of Natural Resources

RECOMMENDATION: Recommend approval of a Resolution Approving a Property Access Agreement (PAA) with the City of Waukegan to allow Ecological Management of Waukegan Dunes, part of the Chiwaukee Prairie Illinois Beach Lake Plain (Lake Plain).

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership

FINANCIAL DATA: No additional cost will be incurred.

BACKGROUND: The Lake Plain, located from the Kenosha Dunes in Wisconsin south to Waukegan Harbor in Illinois, makes a significant contribution to the notable biodiversity of the Lake Michigan watershed and our Great Lakes ecosystem. The majority of this unique Lake Plain is under the protective ownership of public and private non-profit organizations. Recognized for its biological, geological and ecological significance, the 4,300 acres of publicly-protected Lake Plain connect 14 different natural community types and provide habitat for over 500 plant and 300 animal species, including 63 state-threatened or endangered species and four federally-listed species. Equally important, the Lake Plain ecosystem provides critical stop-over habitat for 160 migratory bird species and serves as important breeding habitat for many wetland-dependent bird species. This area also provides one of the few areas in northeastern Illinois with significant public access to Lake Michigan via trails, camping, boating, and beach access.

With funding provided by the IDNR Coastal Management Program (CMP), the District has an existing contract with Native Restoration Services, Inc. (Lake Plain Invasive Species Strike Team) to control a suite of 18 priority invasive plant species within 6,000 acres of high quality coastal natural areas in Kenosha County, Wisconsin and Lake County, Illinois.

The CMP has notified the District that it has an additional \$92,000 in funding for invasive species control along the Waukegan lakeshore. Waukegan Dunes, owned by the City of Waukegan, would be an ideal location for such additional control to be performed. To date, the City of Waukegan has not been involved in the Lake Plain restoration efforts. However, District staff has negotiated a PAA with the City, pursuant to which the City would allow the District and its contractors (including Native Restoration Services, Inc.) to access Waukegan Dunes to perform invasive plant species control and restoration work. This PAA would foster protection and management of the Lake Plain and allow the District and City, working together, to cooperatively focus on common ecological threats and exert a greater overall positive ecological impact to the Lake Plain ecosystem.

Ecological management of the Lake Plain is more effective and cost efficient if the parties work together to coordinate management efforts, share resources and information to improve management practices, and work jointly to secure grant funds and implement common management objectives.

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

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

**A RESOLUTION APPROVING A PROPERTY ACCESS AGREEMENT WITH
THE CITY OF WAUKEGAN TO ALLOW ECOLOGICAL MANAGEMENT OF
WAUKEGAN DUNES, AS PART OF THE CHIWAUKEE PRAIRIE
ILLINOIS BEACH LAKE PLAIN**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns Spring Bluff Forest Preserve, the City of Waukegan (the “City”) owns Waukegan Dunes, and both properties are located within the Lake Michigan watershed in a region commonly referred to as the Chiwaukee Prairie Illinois Beach Lake Plain (hereinafter referred to as the “Lake Plain”); and

WHEREAS, the District desires to preserve, protect, and maintain the natural features and ecological values of the Lake Plain and in furtherance of these objectives to undertake programs and activities such as biological and physical inventory, scientific research, habitat and wildlife management; and

WHEREAS, the District and the City, and the natural areas they own and manage within the Lake Plain, are faced with a common set of conservation threats including, but not limited to: alteration of pre-settlement hydrologic regimes, increased inputs of stormwater (surface water) flows carrying sediment and pollutants, decreased groundwater inputs, establishment and spread of invasive species, altered fire regimes, physical barriers to migration and movement of fish and wildlife, and increases in abundance of meso-predators; and

WHEREAS, the District has been participating in a project known as the “Lake Plain Invasive Species Strike Team Project”, which is intended to control a suite of 18 priority invasive plant species within the Lake Plain, including high quality coastal natural areas in Kenosha County, Wisconsin and Lake County, Illinois (the “Project”); and

WHEREAS, the District desires to expand the Project to Waukegan Dunes, a natural area within the Lake Plain owned by the City and, in furtherance thereof, the District and City have negotiated a “Property Access Agreement” (attached hereto) that would allow the District and its contractors to access Waukegan Dunes for such purposes (the “Property Access Agreement”); and

WHEREAS, the District and the City are authorized to enter into the Property Access Agreement pursuant to Article VII, Section 10 of the Illinois Constitution, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et. seq., and other applicable authority; and

WHEREAS, it is in the District’s best interests to enter into the Property Access Agreement with the City;

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 a part of this Resolution by this reference.

Section 2. Approval of Property Access Agreement. The Property Access Agreement is hereby approved in substantially the form attached hereto. The President of the District is authorized and directed to execute the Property Access Agreement, in substantially the form attached hereto.

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 _____, 2018

AYES:

NAYS:

APPROVED this _____ day of _____, 2018

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

PROPERTY ACCESS AGREEMENT

This PROPERTY Access Agreement is entered into this ___ day of _____, 2018, by and between the City of Waukegan, a municipal corporation, hereinafter referred to as “CITY”, and the Lake County Forest Preserve District, an Illinois unit of local government, hereinafter referred to as “LCFPD” relative to the CITY’s property located at Waukegan Dunes, hereinafter referred to as “PROPERTY” and shown in Attachment A. LCFPD requests permission to enter the PROPERTY for the exclusive purposes of controlling phragmites and other invasive plant species.

1. CITY hereby grants permission to LCFPD, or to LCFPD’s agents or assigns, including, but not limited to, LCFPD’s employees, authorized consultants and/or contractors, or other designees authorized by LCFPD (collectively, “Authorized Parties”) to enter upon the PROPERTY to perform invasive plant management activities at the PROPERTY. This permission is effective immediately upon the execution of this Agreement by CITY and LCFPD.

2. The permission granted by CITY under this Agreement is contemplated to be used for the following activities that may be performed by Authorized Parties who are contracted with LCFPD:

a. This project seeks to control highly invasive common reed (*Phragmites communis*), cattail (*Typha* spp.), and reed canary grass (*Phalaris australis*) throughout the designated areas of high quality pannes and sedge meadows of Waukegan Dunes INAI preserve and Illinois Beach Nature Preserve and to treat invasive brush and exotic plants in corresponding sand prairie and oak savannas of those high quality natural areas. Chemical control within the project areas of the following species, includes, but is not limited to: lyme grass (*Leymus arenarius*), Japanese knotweed (*Polygonum cuspidatum*), spotted knapweed (*Centaurea maculosa*), winged burning bush (*Euonymus alatus*), barberry (*Berberis thunbergii*), oriental bittersweet (*Celastrus orbiculatus*), common reed (*Phragmites australis*), common buckthorn (*Rhamnus cathartica*), cottonwood (*Populus deltoides*), sandbar willow (*Salix interior*), Cattail (*Typha angustifolia* and *Typha* x. *glauca*), cemetery spurge (*Euphorbia cyperinus*), dames rocket (*Hesperis matronalis*), sweet clovers (*Melilotus* sp.), crown vetch (*Coronilla varia*), purple loosestrife (*Lythrum salicaria*), reed canary grass (*Phalaris arundinacea*), and common teasel (*Dipsacus laciniatus*).

3. Upon completion of the work, Authorized Parties will restore the property to the same condition (except for non-native species removed as provided above) prior to the commencement of such activities.

4. The granting of this permission by the CITY is not intended, nor should it be construed, as an admission of liability on the part of the CITY or the CITY’s successors and assigns for any issues discovered on the PROPERTY.

5. Authorized Parties may enter the PROPERTY during the hours of 7:00 am – 6:00 pm, Monday – Friday. LCFPD may also make special arrangements to enter the PROPERTY at other times after written agreement from the CITY, through the CITY's Mayor.

6. LCFPD shall indemnify, defend and hold CITY harmless from and against any and all claims, damages, liabilities, costs and expenses (including without limitation reasonable attorney fees) arising out of LCFPD's (or its agents, employees, contractors and representatives) entry onto and activities upon the PROPERTY. Each Authorized Party severally hereby indemnifies and holds CITY harmless from any and all claims or causes of action arising out of or related to the acts or omissions of said Authorized Party in connection with the performance of activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of CITY, any lessee of the PROPERTY, or any employee or agent of CITY. LCFPD shall require its contractor to add CITY as additional insured on all coverage required by LCFPD for the project.

7. LCFPD will be responsible for obtaining any necessary state or federal permits, including any from US Army Corps of Engineers, Illinois Environmental Protection Agency, Illinois Department of Natural Resources, and any others. LCFPD will provide copies of approved permits to CITY, or, if none required, shall provide documentation of such.

8. Information will be held in confidence unless the LCFPD requests in writing and is granted permission by the CITY to release information to third parties.

9. In exercising its access privileges, Authorized Parties will take reasonable steps not to interfere with the CITY's operations on the PROPERTY.

10. Authorized Parties will give notice to the CITY at least one (1) week in advance of the start of field activities on the PROPERTY.

11. CITY ensures that CITY and any/all PROPERTY operators will give Authorized Parties access to the entire PROPERTY for the purposes set forth in this Agreement.

12. Any party to this Agreement may terminate this Agreement by giving two (2) weeks advanced written notice.

13. This Agreement shall be in effect for the date executed by both parties and shall terminate on December 31, 2018.

14. All notices and other communications which are required to be, or which may be, given under this Agreement shall be in writing, and shall be delivered at the addresses set out herein below. Notice may be given by personal delivery, recognized overnight courier or by United States mail in the manner set forth below. Notice shall be deemed to have been duly given (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address, (b) if by overnight courier, on the first (1st) Business Day after being delivered to a nationally-recognized overnight courier, or (c) if by mail, on the second (2nd) Business Day after being

deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to CITY: Mayor
City of Waukegan
100 N. Martin Luther King, Jr., Ave.
Waukegan, Illinois 60085
mayor.cunningham@waukeganil.gov

COPY to: Robert Long
Daniels, Long, & Pinsel
19 N. County Street
Waukegan, IL 60085
rlong@dlplawyers.com

If to LCFPD: Gary Glowacki
Wildlife Ecologist
Lake County Forest Preserve
1899 West Winchester
Libertyville, Illinois 60048
gglowacki@lcfpd.org

15. In the event that any action, suit, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover from the unsuccessful party as part of the judgment all of such party's attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

16. Any failure or delay by either party to enforce the provisions of this Agreement shall in no way constitute a waiver by such party of any contractual right hereunder, unless such waiver is in writing and signed by the waiving party.

17. Each and every separate division (section, paragraph, clause, item, term, condition, covenant, or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

18. This Agreement shall be construed in accordance with the laws of the State of Illinois and venue shall at all times rest in Lake County Illinois. All terms and provisions of this Agreement are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

Executed the first date above written.

Sam Cunningham, Mayor
City of Waukegan

Lake County Forest Preserve District
by: _____

Its: _____

Date

Date

Attachment A – site map



White shaded area represents phragmites removal area
Green outlined area represents other invasives removal area