

General Offices 1899 West Winchester Road Libertyville, Illinois 60048 847-367-6640 • Fax: 847-367-6649 www.LCFPD.org

Agenda Item#\_ 10.4

DATE:

August 1, 2022

**MEMO TO:** 

Terry Wilke, Chair

**Planning Committee** 

FROM:

Randall L. Seebach

Director of Planning and Land Preservation

**RECOMMENDATION:** Recommend approval of a Resolution approving a Temporary Easement Agreement with the County of Lake (County) for the replacement of three existing culverts with a new bridge on Stearns School Road adjacent Mill Creek Forest Preserve.

#### **STRATEGIC DIRECTION SUPPORTED:** None

**FINANCIAL DATA:** The County will pay a \$1,270.00 Easement Fee pursuant to the District's License and Easement Ordinance. The District will waive any tree replacement fees due to the low quality of the existing trees within the easement area.

**BACKGROUND:** The County, through its Division of Transportation (LCDOT), is in the process of preparing final design plans for the replacement of three existing culverts with a freespan bridge over Mill Creek adjacent to Mill Creek Forest Preserve. Improvements include tree removal, removal of the existing culverts, re-grading the existing embankment, the construction of a new free-span bridge and the restoration of the temporary construction easement premises with native seeding.

As part of the improvements, LCDOT is requesting 0.231 acres of temporary construction easement for the construction of the bridge which includes the re-grading of the existing road embankment.

Construction is scheduled to begin in the spring 2023 with a 125-calendar day timeline for completion. LCDOT will close that section of Stearns School Road for approximately two months during the work.

**REVIEW 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 AUGUST MEETING AUGUST 9, 2022

#### MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith "A Resolution Approving an Easement Agreement with the County of Lake for Bridge Improvements at Mill Creek Forest Preserve," and requests its approval.

PLANNING COMMITTEE:	
Date: 8-1-2022	Roll Call Vote: Ayes: Nays:
	▼ Voice Vote Majority Ayes; Nays:

## LAKE COUNTY FOREST PRESERVE DISTRICT LAKE COUNTY, ILLINOIS

#### A RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH THE COUNTY OF LAKE FOR BRIDGE IMPROVEMENTS AT MILL CREEK FOREST PRESERVE

WHEREAS, the Lake County Forest Preserve District (the "District") owns property known as Mill Creek Forest Preserve (the "Property") located on the north side of Stearns School Road east of Hutchins Road; and

WHEREAS, the County of Lake (the "County") has proposed public transportation improvements along Stearns School Road east of the intersection of Hutchins and Stearns School Roads (the "Project"); and

WHEREAS, the County, acting through its Division of Transportation ("LCDOT"), has requested that the District grant to the County a temporary non-exclusive easement within the Property for the purpose of making public transportation improvements for the Project, including the removal of existing culverts and the construction of a new bridge (the "Easement"); and

WHEREAS, the District has adopted an Ordinance Regarding Licenses and Easements (the "License and easement Ordinance") which sets forth the general requirements for granting easements; and

WHEREAS, Section 6 of the Downstate Forest Preserve Act, 70, ILCS 805/6, authorizes the District to grant easements under or across District property for the construction, operation and maintenance of public services, including public transportation improvements; and

WHEREAS, the District staff has negotiated an easement agreement with LCDOT in the form attached hereto, pursuant to which the District will grant the Easement to the County (the "Temporary Easement Agreement");

**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 Temporary Easement Agreement. The Temporary Easement Agreement is hereby approved in substantially the form attached hereto. The President, Executive Director and Secretary are authorized and directed to execute on behalf of the District, the Temporary Easement Agreement in substantially the form attached hereto, and whatever other documents are necessary to effectuate the transactions contemplated by such Agreement. In the event that any provision of the Temporary Easement Agreement conflicts with the License and Easement Ordinance, the conflicting provision of the License and Easement Ordinance is hereby waived.

Section 3: Effective Date. passage and approval in the ma		e in full force and effect from and after its
PASSED this	day of	_, 2022
AYES:		
NAYS:		
APPROVED this	day of	_, 2022
9		· · · · · · · · · · · · · · · · · · ·
		Angelo D. Kyle, President Lake County Forest Preserve District
ATTEST:		· · ·
Julie Gragnani, Secretary Lake County Forest Preserve I	District	
Exhibit No.		

Prepared by: Matthew E. Norton Burke, Warren, MacKay & Serritella, P.C. 330 North Wabash 21st Floor Chicago, IL 60611

After recording return to: Ken Jones LCFPD 1899 W Winchester Rd Libertyville, IL 60073

Above Space For Recorder's Use Only

# TEMPORARY EASEMENT AGREEMENT BY AND BETWEEN LAKE COUNTY FOREST PRESERVE DISTRICT AND COUNTY OF LAKE

This Temporary Easement Agreement (this "<u>Agreement</u>") is dated and executed as of the \_\_\_\_\_day of \_\_\_\_\_, 2022 (the "<u>Effective Date</u>"), and is 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 805/0.001 <u>et seq.</u> (the "<u>District</u>"), and the COUNTY OF LAKE, a body politic and corporate, organized and existing under the Illinois Counties Code, 55 ILCS 5/1-1001, <u>et seq.</u> (the "<u>County</u>"). In consideration of the provisions below and other consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the County (collectively, the "<u>Parties</u>") agree as follows:

- 1. <u>BACKGROUND</u>. The District holds fee simple title to property commonly known as the Mill Creek Forest Preserve in Lake County, Illinois (the "<u>Subject Property</u>"). The County, through its Division of Transportation ("<u>LCDOT</u>"), has jurisdiction over that certain public right of way commonly known as Stearns School Road. The County, through LCDOT, is undertaking a reconstruction project for public transportation improvements that includes the construction of a new free-span bridge within the Stearns School Road right of way that will cross Mill Creek and replace three existing culverts, approximately 1,300 feet east of the intersection of Hutchens Road and Stearns School Road (the "<u>Bridge Project</u>"). To perform the Bridge Project, the County has requested that the District grant to it a temporary construction easement within a portion of the Subject Property that is approximately 0.231 acres and is located directly north and adjacent to Stearns School Road and Mill Creek and is more particularly described on <u>Exhibit A</u> and generally depicted on <u>Exhibit B</u> (the "<u>Temporary Easement Premises</u>"), attached hereto and made a part hereof.
- 2. <u>GRANT OF EASEMENT</u>. The District hereby grants to the County a non-exclusive temporary easement in, on, over and under the Temporary Easement Premises for the sole purpose of allowing the County, in furtherance of the Bridge Project and in compliance with the construction plans attached to this

Agreement as Exhibit C (the "Plans"), to perform construction activities, remove the trees within the "Tree Removal Box" identified on Exhibit C as necessary for such construction activities, to dewater construction areas, and to re-grade the Temporary Easement Premises (the "Easement"). The County shall use the Easement in compliance with this Agreement and all applicable laws (the "Requirements of Law") and shall undertake the Bridge Project and use the Easement at no cost to the District.

3. <u>TERM OF EASEMENT</u>. The term of the Easement shall commence on the Effective Date and terminate on the earlier of (i) completion of the Bridge Project and Restoration Work (defined in Section 6) and (ii) the date that is thirty-six (36) months after the Effective Date.

#### MONETARY FEE; REIMBURSEMENT OF COSTS.

Within seven (7) days after the Effective Date, the County shall pay the District a one-time monetary fee of \$1,270.00 for the Easement ("Monetary Fee"). The County shall also reimburse the District, promptly upon written notice thereof, for all costs and expenses incurred by the District related to the Bridge Project or this Agreement, including without limitation costs related to legal fees, expenses, inspection expenses, and the value of time spent by staff related to the Bridge Project ("District-Incurred Costs"). The County acknowledges that such costs and expenses may be incurred by the District throughout the term of the Easement.

#### 5. MAINTENANCE AND USE OF TEMPORARY EASEMENT PREMISES.

- A. <u>Temporary Easement Premises</u>. The County must maintain the Temporary Easement Premises in a safe, good, and clean condition without hazard to public use. Additionally, the County must comply with all Requirements of Law that prohibit, restrict, or regulate any hazardous materials.
- B. <u>District Property</u>. In addition to the County's obligations to complete the Restoration Work pursuant to the Plans as provided in Section 6, if the County's use of the Easement results in any damage to the Temporary Easement Premises or any other property owned by the District that is not contemplated in the Plans, the County must repair such damage and restore the property to its condition prior to such damage to the satisfaction of the District's Executive Director. If the County fails to commence such repair and restoration with due diligence, within 30 days after the District gives the County notice thereof, then the District shall have the right, but not the obligation, to cause the affected property to be repaired and restored and to recover from the County all costs incurred by the District to cause the affected property to be repaired or restored.
- C. <u>Abatement of Dangerous Condition</u>. If any acts or omissions by or through the County threaten the public's health or safety, (i) the County shall take all necessary action to abate the dangerous condition and (ii) if the County fails to undertake such abatement with due diligence, within 48 hours after the District gives the County notice thereof, the District shall have the right, but not the obligation, to take all necessary action to abate the dangerous condition, including restricting access near or installing barriers around the dangerous condition, and the County shall reimburse the District for all costs incurred by the District in the performance of such abatement.
- 6. <u>RESTORATION AND VACATION</u>. Prior to its vacation of the Easement Premises, the County shall, at no cost to the District, (i) remove any and all equipment from the Temporary Easement Premises and (ii) restore the Temporary Easement Premises in accordance with the Plans, including the seeding identified on the "Pavement Marking and Landscaping Plan" page of the Plans (the "<u>Restoration Work</u>"). Upon termination of this Agreement or abandonment of the Easement and removal of such equipment and the completion of the Restoration Work, the County shall vacate the Temporary Easement Premises. If the County fails to remove its equipment or complete the Restoration Work in accordance with the Plans, the

District shall have the right, but not the obligation, to perform and complete the removal and Restoration Work, and to charge the County for all costs and expenses, including legal and administrative costs, incurred by the District for such work.

- 7. <u>RESERVATION OF RIGHTS</u>. The District reserves its right to: (i) use the Temporary Easement Premises for any public use, in any manner that will not unreasonably prevent, impede, or interfere with the County's use of the Temporary Easement Premises and (ii) grant other non-exclusive licenses or easements within the Temporary Easement Premises that do not unreasonably prevent, impede, or interfere with the County's use of the Temporary Easement Premises. The County will maintain the Bridge Project so that it does not unreasonably interfere with the District's use and occupancy of the Temporary Easement Premises.
- 8. <u>NO ASSESSMENTS AND LIENS</u>. The County represents and warrants that it will: (i) not assess or impose, or allow to be assessed or imposed, against the Temporary Easement Premises or the Subject Property any special assessment, special service area tax, recapture fee, or similar assessment, tax, or fee (an "Assessment"), (ii) indemnify the District from any Assessment that is imposed, (iii) take all necessary action to keep the Temporary Easement Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with the construction of the Bridge Project, and (iv) cause, at the County's sole cost and expense, (a) any lien that is filed against the Temporary Easement Premises in connection with the Facilities to be discharged and released, and (b) evidence of this discharge and release to be recorded against the Temporary Easement Premises, all within 30 days after the date of filing of the lien.
- 9. <u>SECURITY</u>. If the County fails to comply with its obligations in Sections 5, 6, or 8, then the District may require the County to deposit with the District security in the form of cash or a certified or cashier's check made payable to the District, in an amount determined by the District, as a guarantee that the County shall comply in the future with such obligations, including any required restoration and repair of any damage to the Temporary Easement Premises or any other property owned by the District. Refund of such funds shall be in the manner prescribed by the District's "Ordinance Regarding Licenses and Easements for Public Services" approved July 15, 2014, and as may be amended (the "License and Easement Ordinance").
- 10. <u>INDEMNITY</u>. The County assumes sole and complete responsibility for any personal injury, including death and damage to property, that may arise directly or indirectly from the use of the Temporary Easement Premises by the County, its officers, board members, employees, agents, representatives, and contractors. The County shall indemnify, hold harmless, defend, and release the District, its commissioners, officers, agents, representatives, and employees from and against any alleged loss, claim, damage, and expense (including, without limitation, attorneys' fees and litigation costs) that may be alleged or asserted against any of those parties in connection with (i) the Bridge Project, the Easement, or the use of the Temporary Easement Premises by the County or its officers, board members, employees, agents, representatives, or contractors or (ii) the County's performance of, or failure to perform, its obligations under this Agreement (collectively, the "Indemnified Claims"), whether or not any such performance or failure to perform is alleged to result from the County's breach of this Agreement, negligence, willful misconduct, or any other standard of conduct; however, this indemnity will not apply to the extent any Indemnified Claims are caused by the willful misconduct or gross negligence of the District.
- 11. <u>INSURANCE</u>. The County shall, and shall cause all of its contractors who perform any portion of the Bridge Project (each, a "<u>Contractor</u>") to, at no cost or expense to the District, procure and maintain insurance policies, coverages, and limits that the District determines, in its sole judgment, are sufficient to protect the District, the Temporary Easement Premises, the Subject Property, and any other property owned by the District from the Indemnified Claims and all other actions by the County pursuant to this Agreement.

The County will cause the District to be named as an additional insured on, and will provide to the District certificates of insurance acceptable to the District evidencing, the insurance required by this Section 11. Notwithstanding anything to the contrary in this Agreement, the County shall have the right to self-insure all risks required by this Agreement.

#### 12. INTENTIONALLY OMITTED.

#### REVOCATION OF EASEMENT: REVERTER.

- A. <u>Revocation</u>. If the County breaches any term or provision of this Agreement, and the County fails to cure such breach within the time provided for in this Agreement, or if no time is provided for in this Agreement, within a reasonable time, the District, in addition to any other remedy it may have, may: (i) terminate this Agreement, (ii) revoke the Easement, (iii) record with the office of the Recorder of Lake County, Illinois, a certified copy of a document revoking the Easement, and (iv) pursue any of the remedies set forth in this Agreement or otherwise available to the District at law or in equity.
- B. Reverter. If the County ceases to use the Easement for the purposes set forth in Sections 1 and 2 of this Agreement for a period of eight months or more, the County will be deemed to have abandoned the Easement and all of the County's rights in the Temporary Easement Premises shall revert to the District, and the District may prepare and record with the office of the Recorder of Lake County, Illinois, a certified copy of a document memorializing such abandonment.
- 14. <u>COVENANTS RUNNING WITH THE LAND</u>. The Easement shall be recorded against the Temporary Easement Premises and, during the Term, the rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall run with the land and be binding upon and inure to the benefit of the District and the County and their respective mortgagees, lessees, heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Temporary Easement Premises, or any portion thereof, and all persons claiming under them. Upon expiration of the Term or abandonment, reverter, or termination of the Easement, either party may record against the Temporary Easement Premises a memorandum reciting such abandonment, reverter, or termination.
- NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) by a reputable overnight courier, or by (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (i) actual receipt, (ii) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit, or (iii) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 15, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other Party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the District shall be addressed and delivered to the following address:

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 North Wabash, 21st Floor Chicago, IL 60611

Attention: Mathew E. Norton

Notices and communications to the County shall be addressed and delivered to the following address:

Lake County Division of Transportation 600 W. Winchester Road Libertyville, IL 60048 Attention: Michael G. Zemaitis

with a Copy to:

State's Attorney's Office\_\_\_\_\_\_\_
18 N County Street\_\_\_\_\_\_
Waukegan. IL 60085\_\_\_\_\_
Attention: Stephen Rice

#### 16. GENERAL PROVISIONS.

- A. <u>Entire Agreement</u>. This Agreement is the entire agreement between the Parties and supersedes all of their prior agreements and negotiations, written or oral, relating to the subject matter of this Agreement.
- B. <u>Governing Law</u>. This Agreement is governed by the internal laws, but not the conflict of laws rules, of the State of Illinois.
- C. <u>No Waiver</u>. Any act or omission by the District that may constitute a waiver of one or more its rights under this Agreement shall not constitute or be deemed to be a waiver of any other right that the District has or may have in the future under this Agreement.
- D. <u>Authority</u>. Each person signing this Agreement hereby states and covenants that he or she has read, and understands, this Agreement, that he or she has the authority to execute this Agreement on behalf of the Party whom he or she represents, and that such Party intends to be legally bound by the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date written above.

COUNTY:	DISTRICT:
By: Shane Schneider Its: County Engineer	By:
ATTEST	ATTEST
By: Mame: Michael Kenaltic Its: Row Agent	By:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date written above.

COUNTY:	DISTRICT:	
Ву:	By:	
Name:	Name:	
Its:	Its:	_
ATTEST	ATTEST	
By:	By:	
Name:	Name:	
Its:	Its:	

#### **ACKNOWLEDGMENTS**

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This instrument was acknow of the L corporate, and by	AKE COUNTY the	FOREST	PRESERVE D	2022, by	politic and
		Signa	ture of Notary		
SEAL					
My Commission expires:				9	
STATE OF ILLINOIS COUNTY OF LAKE	) ) SS )		×		
10				T.	,,
This instrument was	acknowledged the	before m	e on	COUNTY OF LA	2022, by <b>KE</b> . a body
politic and corporate, and by			, the	of said	County.
				×	

#### **EXHIBIT A**

#### LEGAL DESCRIPTION OF TEMPORARY EASEMENT PREMISES

That part of the Northeast Quarter of Section 7 and of the Northwest Quarter of Section 8, Township 45 North, Range 11 East of the Third Principal Meridian described as follows:

Commencing at a bronze disk marking the point of curvature for the centerline of Stearns School Road shown at station 15+99.75 per the plat of survey of Stearns School Road (County Highway No. 74) recorded January 8, 1985 as Document No.2331857; thence North 00 degrees 12 minutes 39 seconds East (bearings based on Illinois State Plane Coordinates East Zone NAD83 (2011), a distance of 40.00 feet to the point of curvature of the northerly right of way line of said Stearns School Road, said point being the Point of Beginning; thence North 89 degrees 46 minutes 28 seconds West, 299.20 feet along said northerly right of way line; thence North 78 degrees 56 minutes 27 seconds East, 102.21 feet; thence South 89 degrees 46 minutes 28 seconds East, 198.97 feet along a line 20.00 feet north of and parallel with said northerly right of way line of Stearns School Road; thence southeasterly, 206.03 feet on a curve to the right, concentric with and 20.00 northerly of said right of way line, having a radius of 2,351.83 feet, the chord of said curve bears South 87 degrees 16 minutes 46 seconds East, 205.97 feet; thence South 72 degrees 26 minutes 50 seconds East, 104.11 feet to a point on said northerly right of way line; thence northwesterly, 306.03 feet along said northerly right of way line, being on a non-tangent curve to the left having a radius of 2,331.83 feet, the chord of said curve bears North 86 degrees 01 minutes 46 seconds West, 305.81 feet to the Point of Beginning, all in Lake County, Illinois.

Said temporary easement contains 0.231 acres, more or less.

#### **EXHIBIT B**

#### GENERAL DEPICTION OF TEMPORARY EASEMENT PREMISES

### Exhibit A

### WE'S

Legend

#### Forest Preserve Property

#### **Easement Premises**

Lake County Forest Preserve District Land Preservation and Special Projects 1899 W Winchester Rd Libertyville, Illinob 60048 847-968-3351

Fe et 0 100 200 400

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

2022 Aerial Photo

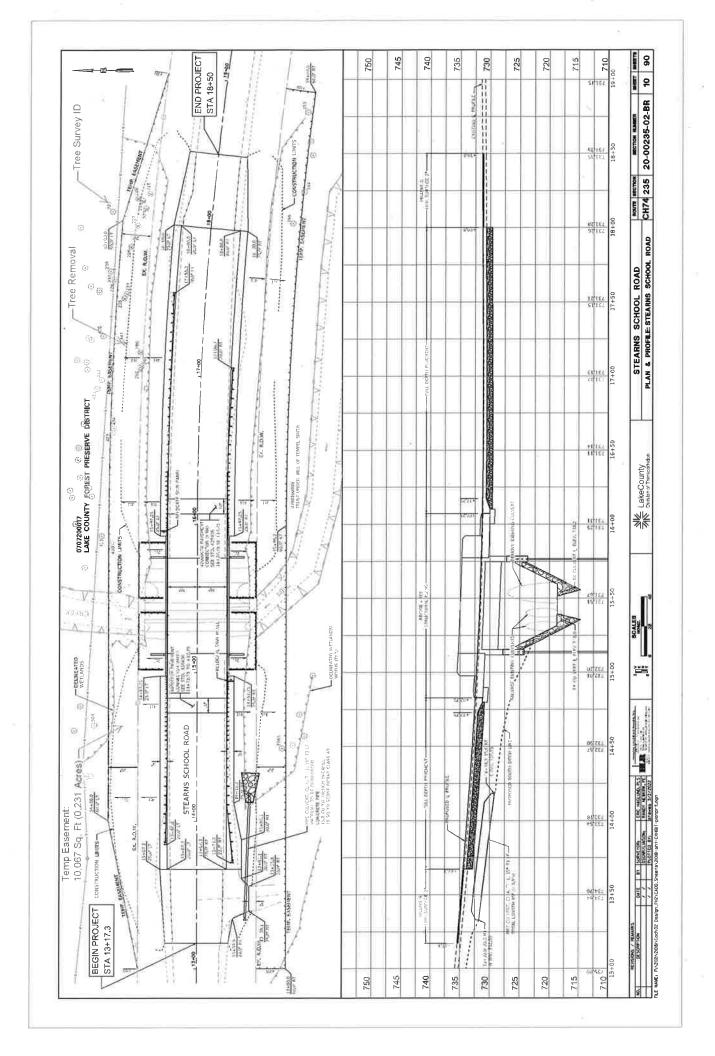
Prepared using information from: Lake County Department of Information & Technology: GIS/Mapping Division 18 North County Street Waukegan, Illinois 60085-4357 847-377-2373

Map Prepared 25 July 2022



## EXHIBIT C

#### THE PLANS



	Stearns School Road Bridge Tree Survey	ad Bridge y	të i	٠	
Tree	Specioe	Hoolth	Structure	To Be	Dia.
218	Box Elder (Acer negundo)	Poor	Poor	×	1.6
219		Dead	Dead	×	6
220	Black Willow (Salix nigra)	Poor	Poor	×	23"
221		Dead	Dead	×	7".
222	Box Elder (Acer negundo)	Poor	Poor		1.6
226	Green Ash (Fraxinus pennsylvanica)	Dead	Dead	×	,,6
227	Black Willow (Salix nigra)	Poor	Poor	×	15"
234		Dead	Dead	×	7"
235	Green Ash (Fraxinus pennsylvanica)	Dead	Dead	×	6
236	Green Ash (Fraxinus pennsylvanica)	Dead	Dead		10"
237	Green Ash (Fraxinus pennsylvanica)	Dead	Dead		11"
238	Green Ash (Fraxinus pennsylvanica)	Dead	Dead		-8
290	Green Ash (Fraxinus pennsylvanica)	Dead	Dead	X	8
-291	Green Ash (Fraxinus pennsylvanica)	Dead	Dead	X	,,6
292	Box Elder (Acer negundo)	Poor	Poor	X	10"
410	Box Elder (Acer negundo)	Poor	Poor	X	12"
411	Box Elder (Acer negundo)	Poor	Poor		17"
423	Eastern Cottonwood (Populus deltoides)	Fair	poog		25"
424	Eastern Cottonwood (Populus deltoides)	Poor	Poor		12"
432	Green Ash (Fraxinus pennsylvanica)	Dead	Dead	[7]	7"
438	Black Walnut (Juglans nigra)	Fair	poog		11"
441	Box Elder (Acer negundo)	Poor	Poor	×	12"
504	Box Elder (Acer negundo)	Poor	Poor		13"
431	Green Ash (Fraxinus pennsylvanica)	Dead	Dead		8

