



LAKE COUNTY FOREST PRESERVES

www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: February 2, 2015

MEMO TO: Carol Calabresa, Chair
Land Preservation and Acquisition Committee

S. Michael Rummel, Chair
Finance and Administrative Committee

FROM: Alex Ty Kovach
Executive Director

SUBJECT: Easement Agreement for Dam Removal at Captain Daniel Wright Woods Forest Preserve

Agenda Item# 9.8

RECOMMENDATION: Recommend approval of a Resolution approving an easement agreement with James McShane allowing the District access to the Des Plaines River for the removal of a low-head dam at Captain Daniel Wright Woods Forest Preserve (“Wright Woods”).

BACKGROUND: In 2011, as part of the Upper Des Plaines River Phase II Flood Reduction Study, the U.S. Army Corps of Engineers determined that reduced flow above low-head dams at Wright Woods and MacArthur Woods Forest Preserve was causing a decline in habitat quality through deposition of sediments, and the low profile of the dams made them a potential hazard to paddlers.

In September 2013, the District’s Board of Commissioners approved an agreement with the Illinois Department of Natural Resources (IDNR) to accept funding for the removal of these dams. That agreement requires the District to obtain and provide access to the Des Plaines River for the removal of the dam and for future maintenance, including maintenance of the riffle structures to be installed.

In order to remove the dam located at Wright Woods, access is required either from the south or east through a portion of Wright Woods. This would have significant impact to the Des Plaines River Trail and District staff recognized a better access location from the west via property owned by James McShane. District staff has negotiated an agreement with James McShane to establish temporary access across its property to Wright Woods, as required in the intergovernmental agreement with IDNR. Long-term access for maintenance and inspection will be across District land.

REASON FOR RECOMMENDATION: Committee recommendation and Board approval are required in accordance with District policy.

REVIEW BY OTHERS: Executive Director, Legal Counsel

FINANCIAL DATA: There is no financial impact.

PRESENTER: Alex Ty Kovach

STATE OF ILLINOIS)
) SS
 COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
 LAKE COUNTY FOREST PRESERVE DISTRICT
 REGULAR MARCH MEETING
 MARCH 10, 2015**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **LAND PRESERVATION AND ACQUISITION COMMITTEE** and **FINANCE AND ADMINISTRATIVE COMMITTEE** present herewith "A Resolution approving an easement agreement with James McShane for dam removal at Captain Daniel Wright Woods Forest Preserve," and request its adoption.

LAND PRESERVATION AND ACQUISITION COMMITTEE:	YEA	NAY	FINANCE AND ADMINISTRATIVE COMMITTEE:	YEA	NAY
<u>Carol Calabresa</u> Carol Calabresa, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>S. Michael Rummel, Chair</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Steven W. Mandel</u> Steven W. Mandel, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Linda Pedersen</u> Linda Pedersen, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Bonnie Thomson Carter</u>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Steve Carlson</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Linda Pedersen</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Bill Durkin</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Tom Weber</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Sandra Hart</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Jeff Werfel</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Aaron Lawlor</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Terry Wilke</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Audrey Nixon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

**A RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH JAMES MCSHANE
FOR DAM REMOVAL AT CAPTAIN DANIEL WRIGHT WOODS FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the "District") owns property that is adjacent to the Des Plaines River known as Captain Daniel Wright Wood Forest Preserve (the "Property"); and

WHEREAS, the District and the Illinois Department of Natural Resources (the "IDNR") have entered into an Intergovernmental Agreement to fund removal of a low-head dam at the Property (the "Project"), which degrades the quality of the water upstream from the dam and may present potential safety hazards to people recreating on the waters near the dam; and

WHEREAS, the Project has been identified as a project in the U.S. Army Corps of Engineers Upper Des Plaines River Flood Reduction Phase II Study; and

WHEREAS, James McShane ("McShane") owns certain property (the "McShane Property") adjacent to the Property, and the District desires to gain access across the McShane Property so that the District can perform the Project; and

WHEREAS, it is in the best interests of the District to enter into an agreement with McShane that grants an easement to the District allowing it to gain access to the Property through the McShane Property so that the District can perform the Project, in substantially the form attached hereto (the "Easement Agreement"); 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 a part of this Resolution by this reference.

Section 2. Approval of Easement Agreement. The Easement Agreement is hereby approved. The President, Secretary and Executive Director of the District are hereby authorized and directed to execute and attest to, on behalf of the District, the Easement Agreement and all other documents that are necessary to complete such transaction provided that the documents have first been approved by the District's 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 _____, 2015

AYES:

NAYS:

APPROVED this ____ day of _____, 2015

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie A. Gragnani, Secretary

Exhibit # _____

Exhibit A

Lake County Forest Preserve District
Department of Land Preservation & Special Projects
1899 W Winchester Rd
Libertyville, IL 60048
847-968-3351

Legend

 Forest Preserve Boundary

 License Area



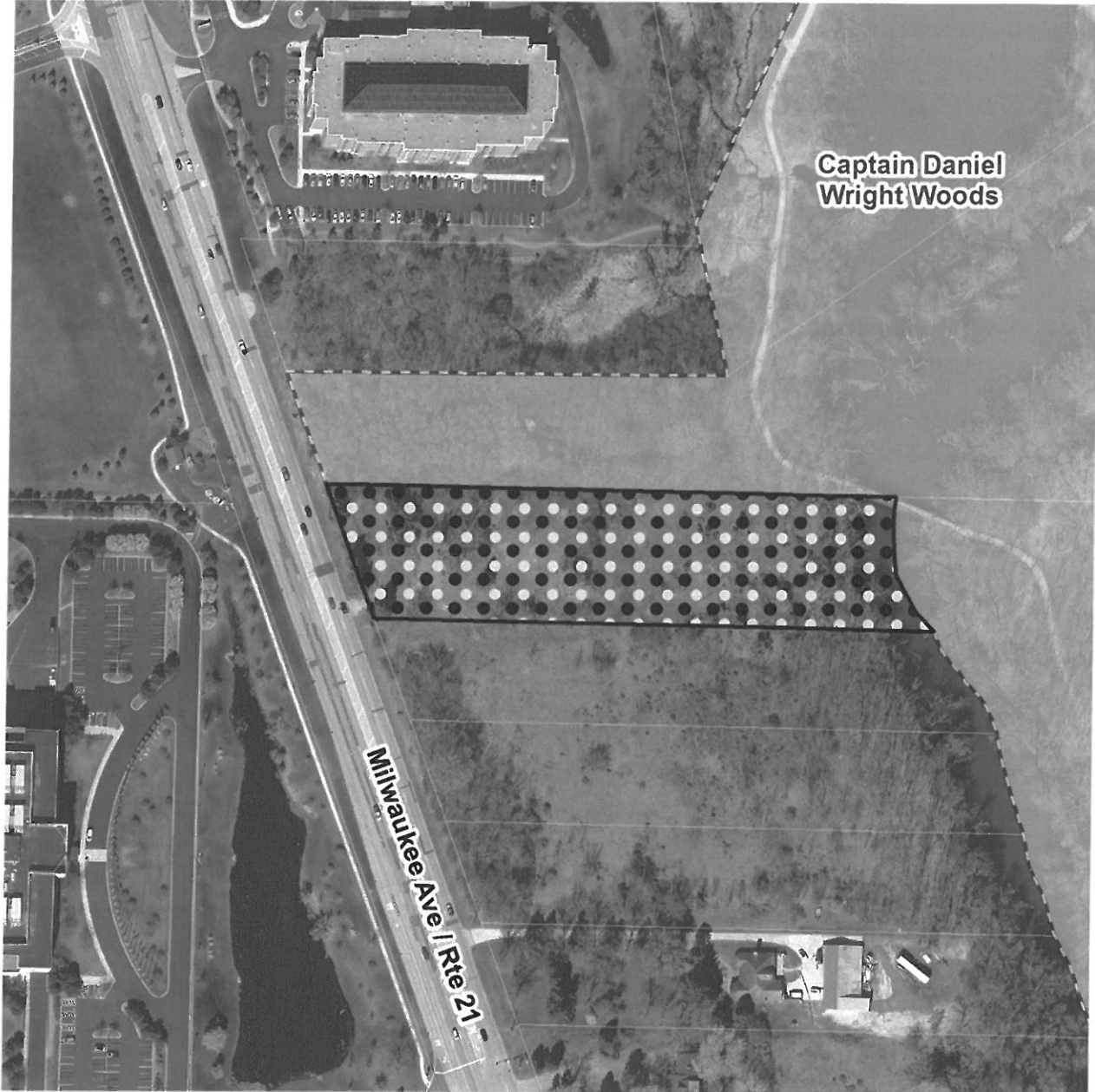
Courtesy Copy Only.
Property boundaries indicated are provided for general location purposes. Wetland and flood limits shown are approximate and should not be used to determine setbacks for structure or as a basis for purchasing property.

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

0 100 200 400 Feet

2012 Aerial Photo

Map Prepared 10 July 2012



TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____ 2015, by and between LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate organized and existing under the Illinois Downstate Forest Preserve District Act, 70 ILCS 805/0.001 et seq. (the "District"), and JAMES A. MCSHANE, an individual with an address of c/o The McShane Companies, 9550 West Higgins Road, Suite 200, Rosemont, Illinois 60018 ("McShane").

RECITALS:

A. McShane is the owner of certain real property commonly known as 13 South Milwaukee Avenue, Vernon Hills, Illinois and identified by the Assessment Office of Lake County, Illinois as P.I.N. 15-10-101-001 (the "McShane Property"), such McShane Property being labeled "McShane" and depicted on the aerial photograph attached hereto and made a part hereof as Exhibit A.

B. The District is the owner of certain real property adjacent to the McShane Property and commonly known as the Captain Daniel Wright Woods Forest Preserve (the "District Property"), a portion of such District Property being labeled "Forest Preserve Property" and depicted on Exhibit A to this Agreement.

C. The District desires to remove a certain man-made, low-head dam (the "Dam") from the Des Plaines River, such Dam being located on the District Property, immediately northeast of the McShane Property and being depicted on Exhibit A to this Agreement as the "Subject Dam." To facilitate such removal, the District desires to (a) use the McShane Property for ingress and egress between the District Property and Milwaukee Avenue so that the District may remove the Dam and (b) utilize a portion of the McShane Property for staging during the Dam removal project (collectively, the "Work").

D. McShane desires to grant, and the District desires to receive, upon and subject to the terms and conditions herein provided, a temporary, non-exclusive, easement over and across the McShane Property, for purposes of ingress, egress and access to and from the District Property by District commissioners, personnel, ranger police, employees, agents, and contractors, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the sum of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements contained herein 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 aforesaid recital paragraphs are by this reference herein incorporated the same 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, McShane hereby grants to the District, a temporary, non-exclusive, easement and right-of-way for (a) ingress, egress and access, including without limitation

vehicular and related traffic, to and from the District Property over and across the McShane Property for the Work, and (b) storage of material and equipment related to the Work, together with the right, permission and authority to enter upon and traverse the McShane Property at such times and in such manner as may be reasonably necessary for the purpose of exercising the rights of the District in accordance with the terms of this Agreement and in compliance with all applicable laws; provided, the foregoing easement shall be utilized only by the District and its commissioners, personnel, ranger police, employees, agents, and contractors and shall not be utilized by the general public for access to the District Property (the "Easement"). With respect to the Easement, McShane shall permit the District access in, on, through and over the McShane Property and shall refrain from unreasonably impeding the District's access to the McShane Property or the District Property. For so long as the Easement remains effective, if applicable, McShane shall provide the District with keys or any other such means or devices of access to any and all existing gates located the McShane Property.

3. Term of Easement. The Easement and (except as otherwise provided herein) all other rights and obligations established hereby shall terminate upon the first to occur of the following: (a) a date eighteen (18) months after the date Work commences; (b) the completion of the Work ; or (c) five (5) business days following the District's receipt of written termination notice from McShane.

4. Recordation. The parties agree that this Agreement shall not be recorded with the Office of the Lake County Recorder of Deeds.

5. Notice of Commencement of Work. The District shall notify McShane at least three (3) business days prior to its scheduled commencement of Work.

6. Hazardous Substance. The District covenants and agrees that (a) the District shall comply with any and all federal, state, and local laws, ordinances, codes, rules and regulations that prohibit, restrict or regulate any material defined therein as a hazardous, radioactive, toxic or carcinogenic substance, pollutant, contaminant or material (collectively, "Hazardous Materials") in connection with the Easement and (b) the District shall not permit or otherwise authorize any other person to, handle, bury, store, retain, refine, produce, spill, allow to seep, leak, escape, leach, pump, pour, emit, empty, discharge, inject, dump, transfer, release or otherwise dispose of or deal with Hazardous Materials, in, on, under or about the McShane Property.

7. Hold Harmless; Indemnity. The District shall, to the fullest extent permitted by law, hold harmless, indemnify, and defend McShane, his agents, attorneys, employees, successors and assigns, from and against any and all losses, liabilities, expenses, claims, costs, causes, actions, litigation costs, reasonable attorneys' fees, suits and damages arising or alleged to have arisen, in whole or in part, out of the negligent acts or omissions of the District related to the Work and its use of the Easement on the McShane Property (collectively, "Claims"). The District shall promptly notify McShane in writing of any Claims against McShane of which the District becomes aware or otherwise has notice, and in no event more than thirty (30) days after the District first becomes aware or otherwise has notice of such Claims. The District's obligations under this Section 7 shall be in addition to, and shall not be limited or waived by the availability or unavailability of, any insurance provided by McShane. The obligations of the District under this Section 7 shall survive the termination of the Easement and this Agreement.

8. Insurance. For so long as any Work is being performed, the District shall maintain insurance coverage with limits not less than the following: (a) Workers' Compensation Insurance, minimum limit as defined by applicable laws; (b) Employer's Liability Insurance, minimum limit \$1,000,000; (c) Commercial General Liability Insurance, minimum combined single limit \$3,000,000; Automobile Liability Insurance, minimum limit \$1,000,000. All such policies (other than the Worker's Compensation policy) shall include a waiver of subrogation in favor of McShane and shall name McShane as an additional insured with respect to any claim for death, personal injury, or property damage arising out of the District's alleged negligent acts or omissions related to the Work. The District's insurance shall be maintained with an insurance company qualified to do business in the State of Illinois and having a current A.M. Best manual rating of at least A-X or better, or self-insurance through participation in an intergovernmental risk pool as provided below. Before entry onto the McShane Property and before expiration of any policy, evidence of these coverages represented by an Accord Certificate issued by the insurance carrier must be furnished to McShane. Certificates of Insurance should specify the additional insured status, the waiver of subrogation, and that such insurance is primary, and any insurance by McShane is excess. The Accord Certificate shall state that McShane will be notified in writing thirty (30) days before cancellation, material change, or renewal of insurance. The parties hereto acknowledge that the District, as of the date of this Agreement, has obtained General Liability, Automotive Liability, and Workers' Compensation coverage through the Park District Risk Management Agency (hereinafter referred to as "PDRMA"). The parties hereto agree that such coverage is acceptable for the purposes of the Easement and this Agreement.

9. Non-Interference by McShane. Except as expressly provided below, McShane covenants and agrees not to unreasonably interfere with or prevent the District from exercising its rights hereunder.

10. Non-Interference and Repair by the District. The District agrees that it shall cause minimal intrusion to McShane in McShane's enjoyment of the use of the McShane Property. Further, The District shall be solely responsible for the repair of any damage to the McShane Property caused by the District, its employees, agents, or invitees.

11. No Warranties, Integration. McShane acknowledges that McShane has not been induced in the making, execution and delivery of this Agreement by any representations, statements, warranties or agreements of the District. 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.

12. 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:

If to McShane:

James A. McShane
Chief Executive Officer
The McShane Companies
Suite 200
9550 West Higgins Road
Rosemont, Illinois 60018

Telephone No.: (847) 392-4300

If to the District:

Lake County Forest Preserve District
Department of Land Preservation
and Special Projects
1899 W. Winchester Road
Libertyville, Illinois 60048
Attn.: Ms. Rebecca Hegner
Telephone No.: 847-968-3357

with a copy to:

Holland & Knight
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
Attn.: Matthew Norton
matt.norton@hklaw.com
Telephone No.: 312-578-6564

or such other address or person as either party from time to time shall designate. Either party may change the address for notices to such party by written notice to the other. Personal delivery shall include delivery by commercial messenger service or overnight courier. Notice given by personal service shall be effective upon the date delivered, if personally delivered, or the date of attempted delivery, if refused. Notice given by mail shall be effective on the earlier of (a) actual receipt or (b) three (3) business days after posting. Notice by overnight courier shall be effective on the next business day following delivery of such notice to such courier.

13. Modification. McShane and the District 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 written amendment hereto.

14. Payment of Taxes: The District is not responsible for the payment of any taxes or governmental charges relating to the McShane Property.

15. Exculpatory Provision. It is expressly understood and agreed by and between McShane and the District that, notwithstanding anything herein to the contrary, no individual member of the District's Board of Commissioners or any officer, official, representative or employee of the District or the District's Board of Commissioners shall be personally liable for any of the District's obligations hereunder, or any undertaking or covenant of the District contained herein.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, McShane and the District have set their hands hereto as of the date first above written.

McSHANE:

JAMES A. McSHANE, an individual

DISTRICT:

LAKE COUNTY FOREST PRESERVE DISTRICT

_____ By: _____
James A. McShane

Name: _____

Its: _____

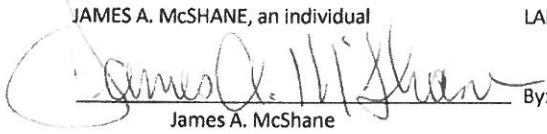
IN WITNESS WHEREOF, McShane and the District have set their hands hereto as of the date first above written.

McSHANE:

DISTRICT:

JAMES A. McSHANE, an individual

LAKE COUNTY FOREST PRESERVE DISTRICT


James A. McShane

By: _____

Name: _____

Its: _____

EXHIBIT A

Aerial Photograph

Exhibit A

Lake County Forest Preserve District
Department of Land Preservation & Special Projects
1899 W Winchester Rd
Libertyville, IL 60048
847-968-3351

Legend

 Forest Preserve Boundary

 License 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.

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

0 100 200 400 Feet

2012 Aerial Photo

Map Prepared 10 July 2012

