

INTERGOVERNMENTAL AGREEMENT
by and between
LAKE COUNTY FOREST PRESERVE DISTRICT and
COUNTY OF LAKE

THIS AGREEMENT (“Agreement”) is dated as of the ____ day of _____, 2015 (**“Effective Date”**), 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 805/0.01 *et seq.* (the **“LCFPD”**) and the **COUNTY OF LAKE, Illinois**, an Illinois body politic and corporate, acting by and through its Chair and County Board, (the **“County”**).

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration the sufficiency of which is hereby acknowledged, LCFPD and the County (collectively, the **“Parties”**) agree as follows:

SECTION 1. RECITALS.

A. The County has jurisdiction and control by fee title, permanent easement, and/or prescriptive easement of a segment of the public right-of-way known as Russell Road/County Highway 19 generally depicted as “Russell Road” on **Exhibit A** attached hereto (the **“Right-of-Way”**). This Agreement concerns a portion of the Right-of-Way located between U.S. Highway 41, on the west, and the Canadian Pacific railroad tracks, on the east.

B. LCFPD is the fee title owner of the properties commonly known as **“Pine Dunes Forest Preserve”** and **“Van Patten Woods Forest Preserve,”** both of which are generally depicted on **Exhibit A**.

C. The County’s long range 2040 Transportation Plan (the **“2040 Plan”**) indicates a proposed non-motorized shared-use public path along Russell Road from U.S. Highway 41 to Sheridan Road (the **“Shared Use Path”**). The Shared Use Path includes the following portions: (i) the existing portion previously completed for the County and generally depicted on **Exhibit A** as the **“Existing Path Segment”**; (ii) a to-be-constructed portion between the Existing Path Segment and the vehicular entrance to Van Patten Woods Forest Preserve (the **“New Trail Segment”**); and (iii) a to-be-constructed portion between the New Trail Segment and Sheridan Road (the **“Future County Path”**).

D. LCFPD desires to construct the New Trail Segment, for bicycle, pedestrian, and equestrian use and to use and manage the Existing Path Segment and the New Trail Segment as part of the LCFPD’s Millennium Trail. The Existing Path Segment and the New Trail Segment will connect to other existing and planned trails within Pine Dunes Forest Preserve, Van Patten Woods Forest Preserve, and other LCFPD properties. The construction of the New Trail Segment is referred to herein as the **“Work”**.

E. To complete the Work, it will be necessary for the County to acquire a 10-foot strip of land along the frontages of two private lots that are adjacent to, and to the south of, the Right-of-Way that are generally depicted on **Exhibit B** attached hereto as the **“Trail Frontage Acquisition Parcels”**.

F. After the County acquires the Trail Frontage Acquisition Parcels, the Parties desire that the County authorize the LCFPD, in accordance with the County’s “Lake County Highway Temporary Closure and Utility and Facility Placement Ordinance” currently codified at Chapter 91 of Title IX of the County’s Code of Ordinances (the **“Highway Ordinance”**), to

complete the Work and to operate, maintain, and replace the New Trail Segment and the Existing Path Segment.

G. To accommodate future road improvements to the Right-of-Way, including the Future County Path, the County desires that LCFPD dedicate to the County (i) within two years of the Effective Date, fee simple interest in a 10-foot strip of land within Van Patten Woods Forest Preserve that is adjacent to, and to the south of, the Right-of-Way (the **“Dedication Parcels”**) and (ii) in the future, if the County Engineer determines pursuant to engineering studies that it is required to accommodate future road improvements and/or the Future County Path, fee simple interest in an additional 10-foot strip of land within the Van Patten Woods Forest Preserve that is adjacent to, and to the south of, the Dedication Parcels (the **“Future Parcels”**). The Dedication Parcels and Future Parcels are generally depicted on **Exhibit B**.

H. The Parties desire to work cooperatively by entering into this Agreement setting forth their respective rights and obligations relating to (i) the acquisition of the Trail Frontage Acquisition Parcels, (ii) the construction of the Work, (iii) the dedication of the Dedication Parcels and Future Parcels and (iv) the maintenance of the Existing Path Segment and New Trail Segment after completion of the Work.

I. The Parties enter into this Agreement pursuant to the Downstate Forest Preserve District Act, 70 ILCS 805/0.01 *et seq.*, the Illinois Counties Code, 55 ILCS 5/1-1001 *et seq.*, Article VII, Section 10 of the Illinois Constitution, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, the Local Government Property Transfer Act, 50 ILCS 605/0.01, *et seq.*, and all other applicable authority.

SECTION 2. ACQUISITION OF PRIVATE PROPERTY.

The County shall, at its sole cost and expense, prepare, or cause to be prepared, the necessary surveys, land acquisition and related documents for the conveyance of the Trail Frontage Acquisition Parcels and use good faith efforts to acquire fee simple title to the Trail Frontage Acquisition Parcels (the **“Acquisition”**). Upon and after the Acquisition, the Trail Frontage Acquisition Parcels will be deemed to be part of the Right-of-Way and the Lake County Highway System. The County shall notify LCFPD after it has completed the Acquisition. If the County is unable to complete the Acquisition within 6 months after the Effective Date, despite good faith efforts to do so, then the Parties shall meet and discuss, in good faith, whether it is appropriate to continue Acquisition efforts or to seek some other alternative approach.

SECTION 3. DEDICATION OF DEDICATION PARCELS AND FUTURE PARCELS TO COUNTY.

A. Dedication Parcels. After the Acquisition, the County shall prepare and deliver to the LCFPD a plat of dedication or other instrument pursuant to which LCFPD shall dedicate the Dedication Parcels to the County (the **“Plat of Dedication”**). The final configuration of the Dedication Parcels depicted in the Plat of Dedication will be subject to the approval of the County’s County Engineer and the LCFPD’s Executive Director, who shall not unreasonably withhold or delay their approval. After its approval, LCFPD shall execute the Plat of Dedication and deliver it to the County. The County will cause the Plat of Dedication to be recorded. Thereafter, the Dedication Parcels will be deemed to be part of the Right-of-Way and the Lake County Highway System. If the County does not deliver a Plat of Dedication for the Dedication Parcels to LCFPD for its review within 2 years after the Effective Date of this Agreement, then LCFPD will have no obligation to dedicate the Dedication Parcels to the County.

B. Future Parcels. If the County Engineer determines pursuant to engineering studies that additional property is required from the LCFPD to accommodate future road improvements and/or the Future County Path, the County shall prepare and deliver to the LCFPD a plat of dedication or other instrument pursuant to which LCFPD shall dedicate the Future Parcels to the County (the ***“Future Plat of Dedication”***). The final configuration of the Future Parcels depicted in the Future Plat of Dedication will be subject to the approval of the County’s County Engineer and the LCFPD’s Executive Director, who shall not unreasonably withhold or delay their approval. After its approval, LCFPD shall execute the Future Plat of Dedication and deliver it to the County. The County will cause the Future Plat of Dedication to be recorded. Thereafter, the Future Parcels will be deemed to be part of the Right-of-Way and the Lake County Highway System. If the County does not deliver a Future Plat of Dedication for the Future Parcels to LCFPD for its review within 25 years after the Effective Date of this Agreement, then LCFPD will have no obligation to dedicate the Future Parcels to the County.

SECTION 4. DESIGN AND CONSTRUCTION OF THE WORK.

A. Contract Documents.

1. Preparation of Contract Documents. The LCFPD shall prepare, or cause to be prepared, at its sole cost and expense, plans and specifications (collectively, the ***“Plans”***), bidding documents and a construction contract (collectively, the ***“Construction Contract”***), and all other documents necessary to let and construct the Work (collectively, the Plans, the Construction Contract, and the other documents are the ***“Contract Documents”***). During preparation of the Contract Documents, the LCFPD shall initiate the County approval process in accordance with the Highway Ordinance. The LCFPD shall cause draft Plans to be provided to the County for its review and approval when the draft Plans are 50% complete, when they are 90% complete, and when they are final. The County shall review the Contract Documents and notify LCFPD whether the County approves or disapproves of the Contract Documents. The County will not unreasonably withhold or delay its approval.

2. Construction Contract. The Construction Contract will require the Contractor (as defined herein) to:

- (i) fully restore, to its pre-construction condition, any portion of the Right-of-Way that is damaged or disturbed by the Work,
- (ii) in compliance with applicable law, including the Public Construction Bond Act, 30 ILCS 550/0.01 *et seq.*, post and maintain (until the County and LCFPD have each accepted all of the Work) (a) a performance bond or other security, in an amount not less than 100% of the price of the Construction Contract and (b) a labor and material payment bond (the ***“Performance/Payment Security”***),
- (iii) indemnify LCFPD and the County for all claims arising from the Contractor’s performance of, or failure to perform, the Work;
- (iv) provide insurance in coverages and amounts acceptable to LCFPD and the County, including general liability insurance that names LCFPD and the County as additional insureds; and

- (v) grant to the County the right to inspect the Work at any time and (with the LCFPD) to provide final acceptance of the Work.

B. Award of Contracts and Performance of Work. After the County has approved the Contract Documents, and granted any other approvals necessary pursuant to the Highway Ordinance, the LCFPD shall, in accordance with applicable law, solicit competitive bids for the Work to be performed pursuant to the Construction Contract, notify the County of the bidders and amounts of their bids, and award the Construction Contract for the Work to the lowest responsible bidder or bidders (collectively, the "**Contractor**"). The LCFPD's decision on the award of the Construction Contract will be binding and conclusive. The LCFPD shall cause the Work to be constructed by the Contractor at no cost to County in accordance with the Contract Documents. After the Work has been completed and accepted by LCFPD and the County, the LCFPD shall, at no cost to County, deliver, or cause to be delivered, plans depicting the as-built condition of the finished Work. The County will not (i) charge the District any fees related to the Work or (ii) require a performance guarantee or other security for the Work, other than the Performance/Payment Security. The County will assist the LCFPD with coordination of the Work, including coordinating with public utility companies that own equipment located within the Right-of-Way that may be affected by the New Trail Segment.

SECTION 5. MAINTENANCE, OPERATION, AND CONTROL.

A. County Obligations and Rights. At all times, the County shall (i) maintain, operate, and control all portions of the Right-of-Way and all roadway improvements thereon, except for the New Trail Segment and Existing Path Segment and (ii) have the unrestricted right to use the Right-of-Way for public roadway purposes, including roadway improvements that are deemed necessary or appropriate in the sole and exclusive judgment of the County's County Engineer, and to allow use of the Right-of-Way by other entities as provided for in the Ordinances. However, both the District and the County desire that the Existing Path Segment and New Trail Segment remain open in perpetuity for recreational use to the general public and to provide connections to the Future County Path and other public paths in Lake County. Therefore, in the exercise of its rights described in this Section, the County shall not remove or substantially impact the Existing Path Segment or the New Trail Segment unless the County Engineer and the District's Executive Director, after participating in good faith discussions, have determined in writing that there are no reasonable alternatives that will accomplish the County's goals without removing or substantially impacting the Existing Path Segment or the New Trail Segment.

B. LCFPD Obligations; Shared-Use Trail. Upon completion and final acceptance of the Work, LCFPD shall (i) own, maintain, operate, and control both the Existing Path Segment and the New Trail Segment and (ii) have the unrestricted right to use the Existing Path Segment and the New Trail Segment for public trail purposes and uses, including pedestrian, bicycle, and equestrian uses, in accordance with the LCFPD's generally applicable laws and policies. Notwithstanding any County law or policy, LCFPD may allow equestrian uses of the Existing Path Segment and the New Trail Segment in accordance with applicable LCFPD laws and policies and the County, if necessary, will amend or waive any law or policy that would otherwise prohibit or restrict such use.

SECTION 6. GENERAL PROVISIONS.

A. Compliance with Laws. In exercising their rights under this Agreement, the Parties shall comply with all applicable federal, state, and local laws.

B. Restoration. If any of the Work by the Contractor damages, destroys, or causes any adverse impact to the Right-of-Way, or any portion thereof, in any manner that is not authorized in the approved Contract Documents for the Work, and the Contractor fails or refuses to restore or repair the affected property, the LCFPD shall restore, at no cost to County, such property to a condition at least as good as the condition of such property before such damage, destruction, or adverse impact.

C. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) overnight by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic mail. Electronic mail notices shall be deemed valid only to the extent that they are actually received by the individual to whom addressed. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such Party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications to LCFPD shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District
1899 W. Winchester Road
Libertyville, IL 60048
Attention: Executive Director
E-mail: akovach@lcfpd.org

With a copy to:
Matthew E. Norton, Esq.
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, IL 60603
E-mail: matt.norton@hklaw.com

Notices and communications to the County shall be addressed to, and delivered at, the following addresses:

Lake County Division of Transportation
600 W. Winchester Road
Libertyville, IL 60048
Attention: County Engineer
E-mail: ptrigg@lakecountyil.gov

With a copy to:
Lake County State's Attorney Office
18 N. County Street, 3rd Floor

Waukegan, IL 60085
Attention: Civil Division
E-mail: ggunnarsson@lakecountyil.gov

The foregoing shall not be deemed to invalidate any notice actually received.

D. Time of the Essence. Time is of the essence in the performance of this Agreement.

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Exhibits. Exhibits A and B attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement.

G. Amendments and Modifications. No amendment or modification to this Agreement shall 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.

H. Authority to Execute. Each person executing this Agreement warrants and represents to the Parties (i) that he or she has the full and complete right, power and authority to execute this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement on behalf of the Party on whose behalf he or she is executing; and (ii) that all legal actions necessary to authorize him or her to execute and deliver this Agreement have been taken.

I. Severability. Should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

J. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation, or entity shall be made, or be valid, against the Parties.

K. Power and Authority of the County and County Engineer. This Agreement shall not be construed, in any manner or form, to limit the power or authority of the County or the County Engineer, subject to Section 5.A of this Agreement, to maintain, operate, manage, improve, construct, reconstruct, repair, widen or expand County Highways as best determined, as provided by law.

L. Relationship of the LCFPD and the County. Nothing in this Agreement is intended or shall be construed, in any manner or form, as creating or establishing a legal partnership or agency relationship between the Parties, or as establishing (i) the LCFPD (including its elected officials, duly appointed officials, employees and agents) as the agent, representative or employee of the County or (ii) the County (including its elected officials, duly appointed officials, employees and agents) as the agent, representative or employee of the LCFPD, for any purpose or in any manner, whatsoever. Each Party is and shall remain independent of the other Party with respect to all services performed under this Agreement.

M. Entire Agreement. The entire agreement of the Parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter hereof.

N. Agreement Shall Be Binding. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns. Neither Party shall assign, transfer, sell, grant, convey, deed, cede or otherwise give over, in any manner or form, any of its duties, obligations and/or responsibilities as heretofore set forth in this Agreement without first obtaining the expressed written consent and permission of the other Party to this Agreement.

O. Enforcement. This Agreement shall be enforceable in any court of competent jurisdiction in Lake County by each of the Parties by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, duties, responsibilities and obligations contained herein.

P. Multiple Counterparts. This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute this Agreement.

ATTEST:

**LAKE COUNTY FOREST PRESERVE
DISTRICT**

By: _____
Julie Gragnani, Secretary

By: _____
Ann B. Maine, President

RECOMMENDED FOR EXECUTION

Lake County
County Engineer/
Director of Transportation

COUNTY OF LAKE

ATTEST:

By: _____
Chairman

Clerk
Lake County

Lake County of Board

Date: _____

INDEX OF EXHIBITS

- | | |
|-----------|---|
| Exhibit A | Depiction of Right-of-Way, Pine Dunes Forest Preserve, Van Patten Woods Forest Preserve, Existing Path Segment, and New Trail Segment |
| Exhibit B | Depiction of Trail Frontage Acquisition Parcels, Dedication Parcels, and Future Parcels |

EXHIBIT A

**DEPICTION OF RIGHT-OF-WAY, PINE DUNES FOREST PRESERVE, VAN PATTEN
WOODS FOREST PRESERVE, EXISTING PATH SEGMENT, AND NEW TRAIL SEGMENT**

Exhibit A



Legend

- Forest Preserve Boundary
- Des Plaines River Trail
- Existing Path Segment
- Existing Millennium Trail
- New Trail Segment

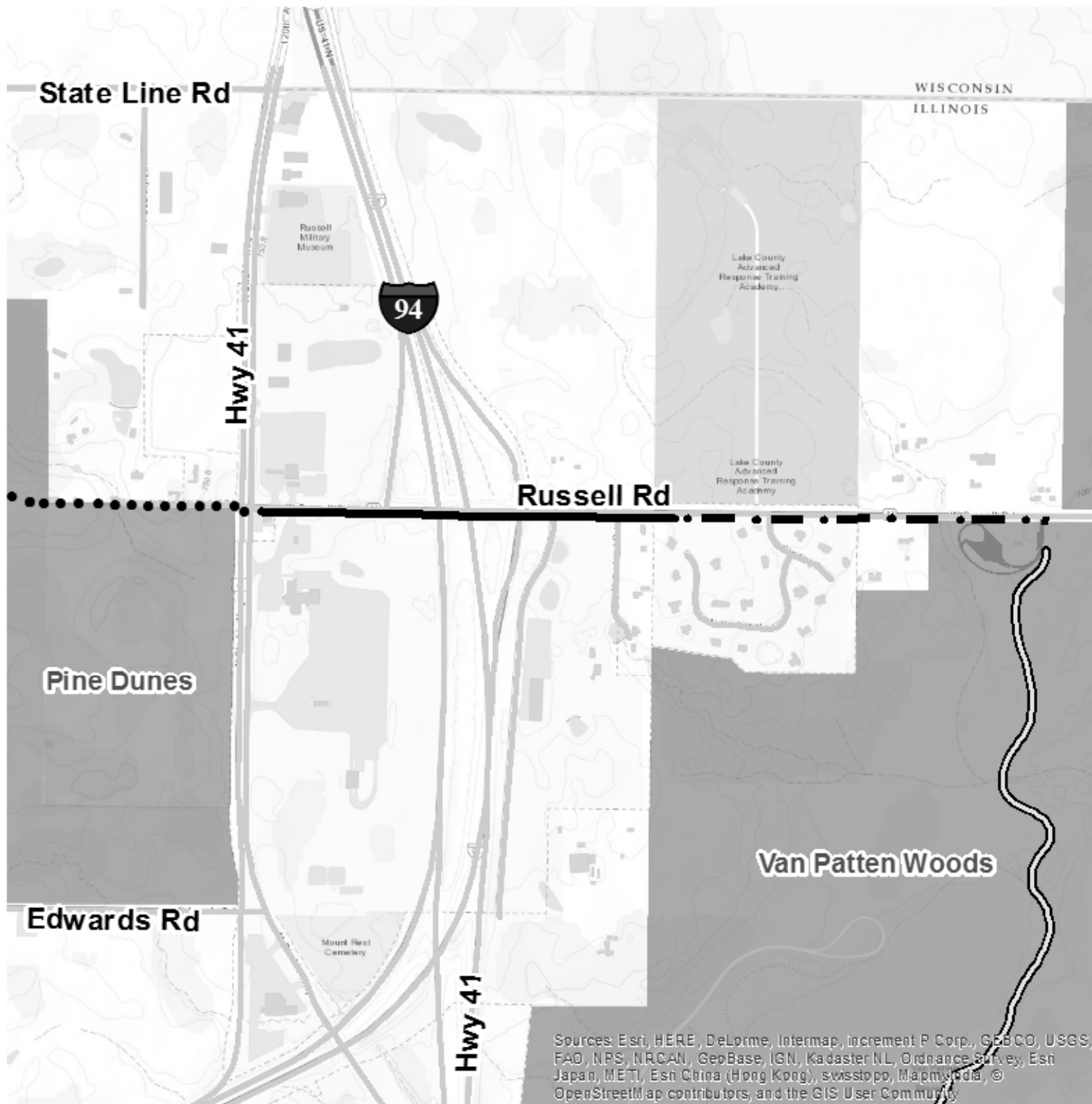
Lake County Forest Preserve District
Land Preservation and Special Projects
1899 W Winchester Rd
Libertyville, Illinois 60048
847-968-3351

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

Map Prepared 23 October 2015

0 400 800 1,600 Feet



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, Mapbox, © OpenStreetMap contributors, and the GIS User Community

EXHIBIT B

**DEPICTION OF TRAIL FRONTAGE ACQUISITION PARCELS, DEDICATION PARCELS,
AND FUTURE PARCELS**

Exhibit B

Legend

- Forest Preserve Boundaries Trail Frontage Acquisition Parcels
Dedication Parcels: 0.9 Acres Future Parcels: 0.9 Acres

Courtesy Copy Only.

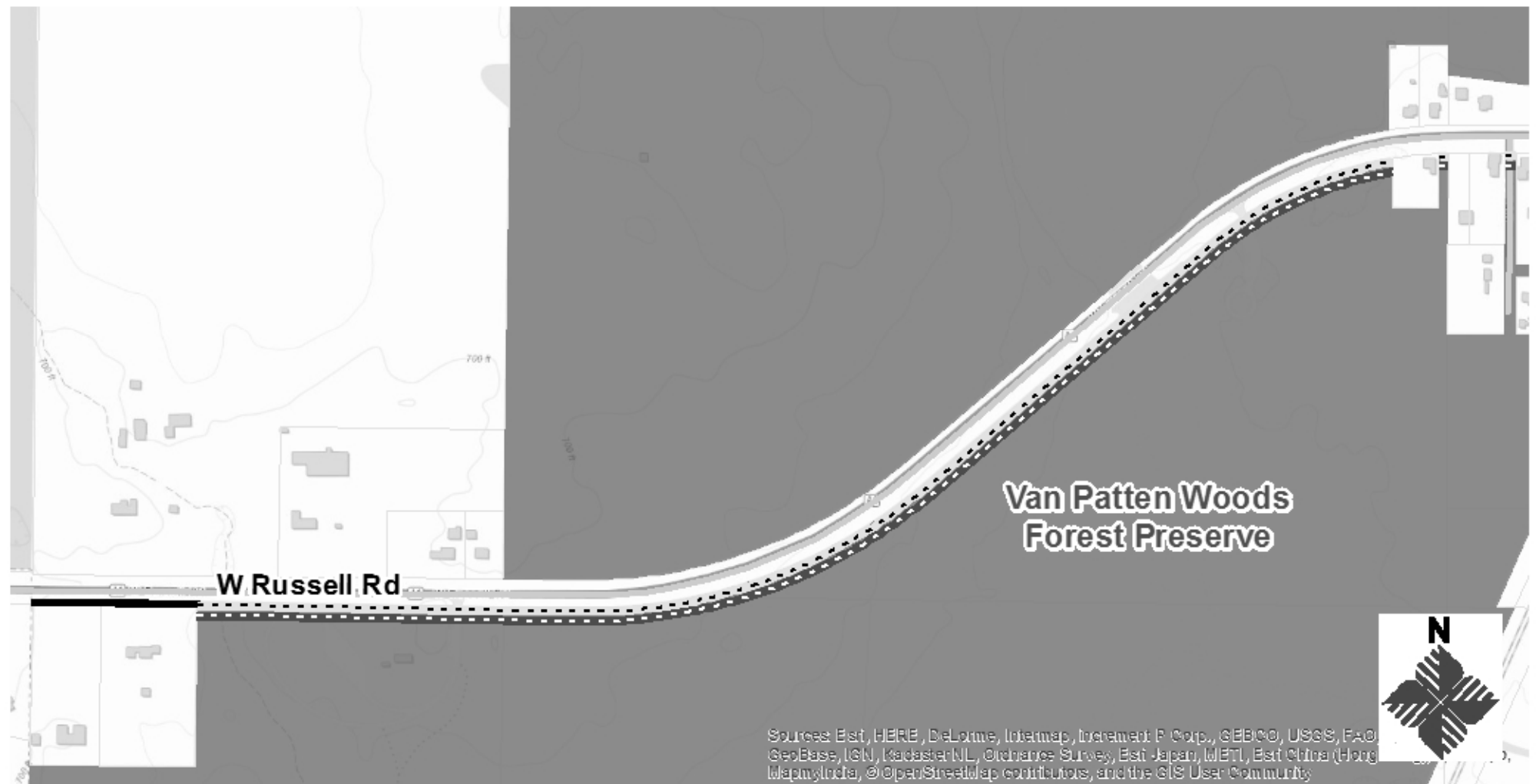
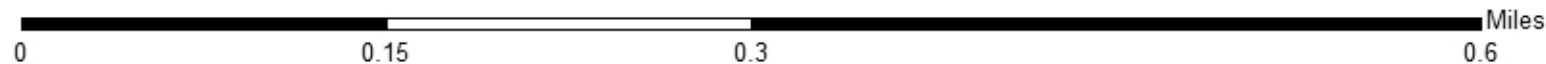
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2014 Aerial Photo

Lake County Forest Preserve District
1899 W Winchester Rd
Libertyville, Illinois 60048
847-968-3351
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

Map Prepared 26 October 2015



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