



Memorandum

To: ACL Board

Date: May 4, 2021

From: Megan Shamp

Memo #: 2021-44

Topic: May committee/commission changes

Recommendation: To appoint Dave Allgood as Chair, Bill Doran as Vice Chair, and Sandra Malahy as Secretary of the Legal Commission; to appoint Darrell Carr to the Golf Commission; and to accept the resignation of Mary Hannon from the Recreation Commission, Fern Tribbey from the Budget/Audit Commission, and Bob Stanger from the Golf and Rules and Regulations Commissions.

*Plan on a Page: High Performing Operations and Management –
To operate at full efficiency and effectiveness for the benefit of the
Association*



Memorandum

To: Board of Directors

Date: May 4, 2021

From: Joe Wiener, Building Inspector

Memo: 2021-46

Topic: Lot Combination 08-043 and 08-044

Issue & Analysis: Roland & Gisela Schroeder have requested a Lot Combination of lots 43 and 44 in the Independence (8) subdivision. This request was reviewed and approved by the Architectural and Environmental Control Committee at their May 1, 2021 meeting.

Recommendation: To approve the Lot Combination Agreement requested by Roland & Gisela Schroeder for lots 43 and 44 in the Independence (8) subdivision. Once recorded, the Lot Combination Agreement may not be revoked or rescinded.

Plan on a Page: Improvement of Infrastructure – To develop, maintain and improve the existing infrastructure.
High Performing Operations and Management - 1YAP – Provide on-going training of Board of Directors and staff on governing documents for consistency in decision-making.



Memorandum

To: Board of Directors

Date: May 4, 2021

From: Joe Wiener, Building Inspector

Memo: 2021-47

Topic: Request to Restrict Lot - Smith

Issue: The office has received a Request to Restrict Lot from Kevin Smith, owner of lot 12-100. The lot was inspected by the Building Department, and a raised movable wood structure supporting cut wood was found on the property.

Mr. Smith requested to restrict the same lot at the September 15, 2018 Board of Directors meeting and was denied because the restriction would further reduce ACLPOA revenue.

There are currently 107 approved Restricted Lots which result in an annual revenue loss of \$47,080 based on an \$1,100 assessment.

Recommendation: TBD

Plan on a Page: High Performing Operations and Management – Long Range Goals and Measures – Assure the knowledge and understanding of roles, responsibilities, and governing documents by Board of Directors.



Memorandum

To: Board of Directors

Date: May 5, 2021

From: Shaun Nordlie

Memo: 2021-51

Topic: Kayak Rack Placement

Issue: Owners have been requesting a place to hold their kayaks around the lake. Rather than haul their kayak to the location where they launch, they have asked if the Association could construct and rent locker space to owners for their kayaks. In 2020, the Maintenance Department built the first kayak locker and placed it in Presidents Cove area, a second locker was approved in February also for President's Cove. These lockers are currently rented, and we have more requests from owners to rent a locker. This locker will look similar to the second locker, which is slightly longer to accommodate two person kayaks. The third rack will be placed in Winchester Cove area.

Owners who rent a locker from the Association will pay the \$25 fee per year. Owners will provide their own lock for their locker. They will sign a rental agreement with the Association that can be renewed annually

The locker placement was reviewed and approved by the AECC at their May 1st meeting.

Recommendation: To approve the placement of a third kayak locker rack in the Winchester Cove area.

Plan on a Page: Amenities and Services: Conduct a cost-analysis of new amenities in conjunction with CAMP Masterplan

**APPLE CANYON LAKE PROPERTY OWNERS ASSOCIATION
ARCHITECTURAL AND ENVIRONMENTAL CONTROL COMMITTEE
BUILDING PERMIT APPLICATION**

PERMIT NO. _____ **5.1**
ISSUE DATE _____

OWNER'S NAME **ACLPOA** PHONE NO. () **815 492 2238** SUBDIVISION **BIG SPIRIT (S)**
ADDRESS **14157 CANYON CLUB DR** LOT NO. **004-157-00**
BUILDER'S NAME **SELF** PHONE NO. () _____

ADDRESS _____

GENERAL CARPENTRY CONTRACTOR <small>(Name, Address, Phone)</small> <u>SELF</u>												
CONCRETE CONTRACTOR <small>(Name, Address, Phone)</small>												
ELECTRICAL CONTRACTOR <small>(Name, Address, Phone)</small>												
HEATING CONTRACTOR <small>(Name, Address, Phone)</small>												
MASONRY CONTRACTOR <small>(Name, Address, Phone)</small>												
LANDSCAPING CONTRACTOR <small>(Name, Address, Phone)</small>												
PLUMBING CONTRACTOR <small>(Name, Address, Phone)</small>												
SEPTIC SYSTEM CONTRACTOR <small>(Name, Address, Phone)</small>												
OTHER <small>(Name, Address, Phone)</small>												
<table style="width:100%; border:none;"> <tr> <td>RESIDENCE _____</td> <td>ADDITION _____</td> <td>REMODELING _____</td> <td>DECK _____</td> <td>LANDSCAPING _____</td> <td>OTHER _____</td> </tr> <tr> <td>GARAGE _____</td> <td>DRIVEWAY _____</td> <td>PIER/DOCK _____</td> <td>SHED <input checked="" type="checkbox"/></td> <td>WATER FRONT _____</td> <td>GENERAL _____</td> </tr> </table>	RESIDENCE _____	ADDITION _____	REMODELING _____	DECK _____	LANDSCAPING _____	OTHER _____	GARAGE _____	DRIVEWAY _____	PIER/DOCK _____	SHED <input checked="" type="checkbox"/>	WATER FRONT _____	GENERAL _____
RESIDENCE _____	ADDITION _____	REMODELING _____	DECK _____	LANDSCAPING _____	OTHER _____							
GARAGE _____	DRIVEWAY _____	PIER/DOCK _____	SHED <input checked="" type="checkbox"/>	WATER FRONT _____	GENERAL _____							

DESCRIPTION: **KAYAK STORAGE RACK**

REQUIRED INFORMATION: FOR ARCHITECTURAL AND ENVIRONMENTAL CONTROL COMMITTEE ONLY

PLANS (3 SETS)	SEPTIC DESIGN w/ County Approval	WATER TAP FEE
PERMIT FEES	BOND FEES	TITLE RECORD
COUNTY BUILDING PERMIT	ENTRANCE PERMIT (Township)	OTHER

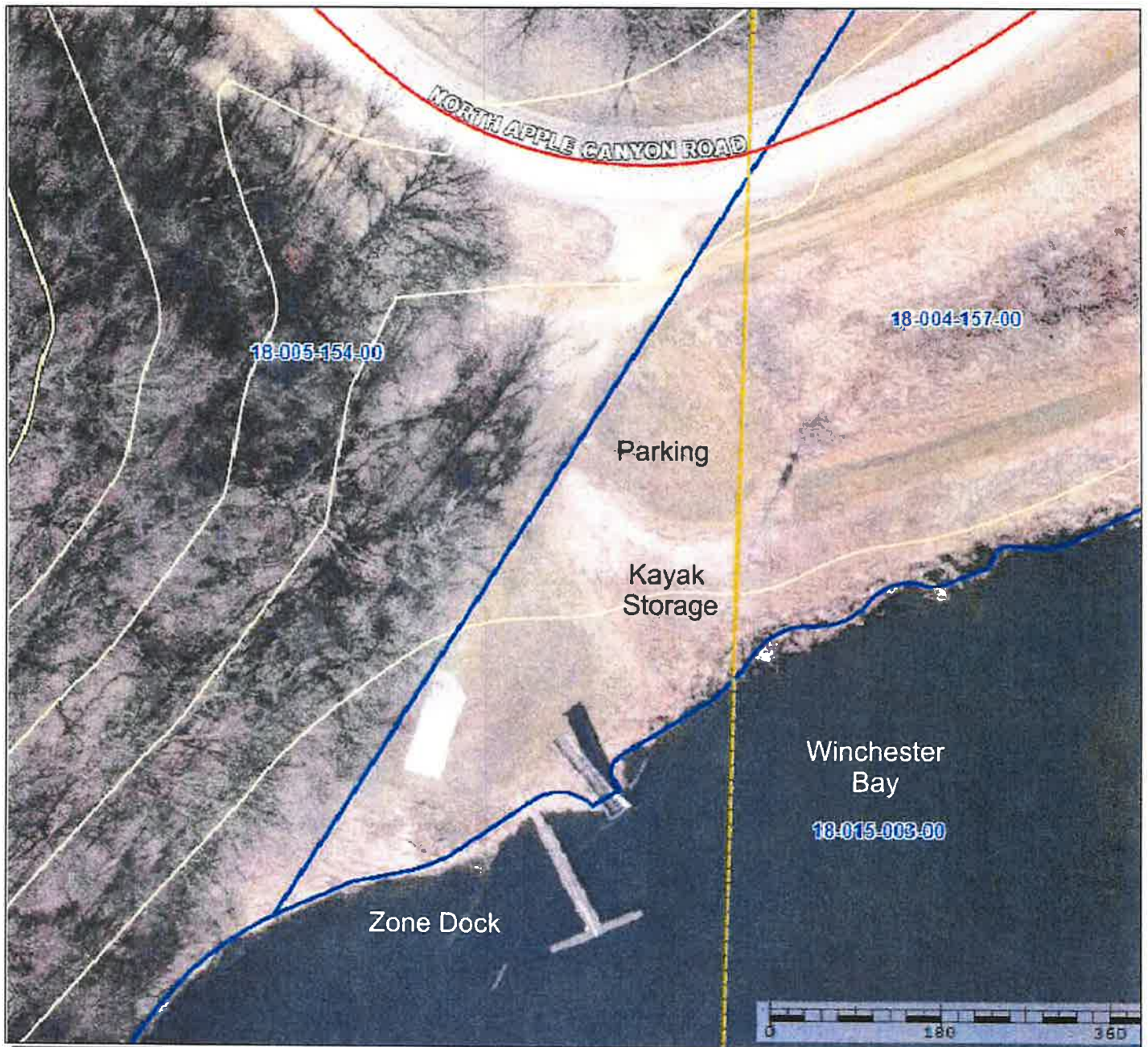
APPROVED BY: **JW** Date: **5/1/21**

Notes

<p>FEE: WAIVED</p> <p align="right">Total Permits Paid \$ <u>N/A</u></p>	<p>Owner/Builder Signature _____ (Date)</p> <p>AECC Signature _____</p> <p>AECC Signature _____</p> <p>AECC Signature _____</p>
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*Make all checks payable to Apple Canyon Lake Property Owners Association * See Back Pg for Breakout.

THE ISSUANCE OF A BUILDING PERMIT DOES NOT RELIEVE THE OWNER AND/OR CONTRACTOR AND SUBCONTRACTOR OF RESPONSIBILITY TO COMPLY WITH THE ACL BUILDING CODE AND ALL APPLICABLE STATE AND COUNTY REGULATIONS. NOTE - AN ON SITE DUMPSTER IS REQUIRED FOR ALL NEW HOUSES AND MAJOR ADDITIONS/REMODELING.



- Sub Lot Dimensions
- Section Numbers
- Corporate Boundaries
- Driveways
- Public Roads/Streets
- Township Boundaries
- Section Lines
- Parcels with Labels
- 50' Contours
- 10' Contours
- Orto 2016 Color



Scale: 1:600

Disclaimer: All information is believed to be accurate but not guaranteed to be without error. This is not a substitute for an actual field survey.
Date: 04/21/2021

PROPOSED KAYAK RACK



Apple Canyon Lake Property Owners Association Committee Motion Card

Committee: AECC

Date: May 1, 2021

Agenda Item: 5.1

I Move:

Regarding 14A157 Canyon Club Dr

To permit the construction of a Kayak Storage Rack and restricted parking next to Winchester Bay (18-004-157-00) and North Apple Canyon Road.

Action Taken

MOTION MADE BY: <u>London Williams GW</u>	VOTE RECORDED:
MOTION SECONDED BY: <u>Marlene Hendrick</u>	YEA: <u>6</u>
CHAIR: <u>Cindy Zepky</u>	NAY: <u>0</u>
	ABSTAIN: <u>0</u>



Memorandum

To: ACL Board

Date: May 5, 2021

From: Shaun Nordlie

Memo #: 2021-50

Topic: Flood Mitigation Ad Hoc Commission

Analysis: At the April 2021 Board of Directors meeting, the Board approved preliminary work to be completed by CMT to help determine the best options and cost for Flood Mitigation. During the discussion on the projects, the Board also discussed the creation of an ad hoc commission that could meet with the engineers to discuss the results of the preliminary projects and research the best options for how to proceed. The Board thought the idea of creating this Commission would be a benefit to the Board and the Association.

The charge of the Flood Mitigation Ad Hoc Commission will be: **To work with the engineers approved by the Board of Directors to explore options for the Association to proceed with finding the best solution for removing water out of the lake during heavy rain events. The ad hoc commission will report their results to the Board of Directors with a recommendation on how to proceed. During construction, the commission will work with the engineers and contractors and report progress, issues and change orders to the Board of Directors as necessary.**

Recommendation: To approve the creation of the Flood Mitigation Ad Hoc Commission and its charge.

Plan on a Page: Improvement of Infrastructure: 1YAP – Develop and communicate an engineering concept, plan of action, and implementation for flood mitigation



Memorandum

To: ACL Board

Date: May 4, 2021

From: Barb Hendren, ACL Board President

Memo #: 2021-45

Topic: appointment of the Nominating Committee

Issue & Analysis: The Amended and Restated Bylaws state “The Nominating Committee shall consist of seven (7) Members appointed by the President with the approval of the majority of the Board at the Board meeting preceding the regular annual meeting. Said Nominating Committee shall serve for the year following the next annual meeting. The President shall make an earnest attempt to appoint to the Nominating Committee Members who are representative of all subdivisions of the Association, with at least one of them being a current Board member.”

The current Nominating Committee - Barb Hendren (Apache), John Killeen (President), Bill Bourell (Big Spirit), Mike Yorke (Big Spirit), Tom Sheehan (Apache), Dave Bohnenkamp (General Grant), and JoAnn Blackmore (Canyon Club) - have all volunteered to serve on the Nominating Committee next year.

Recommendation: To appoint Barb Hendren, John Killeen, Bill Bourell, Mike Yorke, Tom Sheehan, Dave Bohnenkamp, and JoAnn Blackmore to the Nominating Committee.



Memorandum

To: ACL Board

Date: May 4, 2021

From: Shaun Nordlie

Memo #: 2021-49

Topic: Agreement with RES-AES for Final Design Plans for Winchester Bay

Analysis: Resource Environmental Solutions (RES) acquired Applied Ecological Services (AES) in February 2021. AES was hired in 2020 to develop a concept plan for the Winchester Bay stream reach to reduce erosion and limit silt entering into the lake. RES is now proposing Final Design Plans for this area with work starting in 2021. The plan includes the following –

- Topographical Survey – This will be a 1' topographic survey of the proposed project area
- Tree Survey – including all native trees that are recommended to be preserved with the 10-acre project area
- Stream and Riparian Area Site Assessment – Using the topographical data to create a leaf-off color aerial photograph to be used during the site visit
- Preliminary and Final Design Plans & Opinion of Probable Cost for Construction (OPCC) - A preliminary design will be submitted for review and comment from ACL and the permitting agencies. Changes and recommendations will be incorporated into the Final Design which will be signed by an Illinois Licensed Engineer.
- Environmental Permitting – A Corps (Rock Island District / IEPA) Joint Application will be submitted for the project as well as IDNR & USFWS (U.S. Fish and Wildlife Service). They will also complete the Jo Daviess SWCD permit application. And IEPA Stormwater Pollution Prevention Plan. This also includes payment fees for IDNR & JDSWCD and IEPA permits
- Illinois DNR-OWR (Office of Water Resources) requires stream projects with mapped floodways and/or a drainage area greater than 10 square miles in rural area. The project area is less than this requirement, but RES-AES has not received confirmation from the DNR that this would not be a requirement for this project.

The association plans on submitting a 319 Grant with the Illinois EPA in 2023 to help offset some of the cost of the Final Design project/ The total cost of the proposal is

\$61,000. Work will be started in 2021. Money has been budgeted in the 2021 R&R budget for this project.

Recommendation: To approve the contract with RES-AES of Broadhead, WI for Preliminary and Final Design Plans for Winchester Bay Stream Reach for \$61,000 to be paid out of the R&R fund.

Plan on a Page: Improvement of Infrastructure: 1YAP – Retain and continue utilizing consultant services for lake and watershed management and communicate their findings, Continue Dry Dam action plan for sub-watersheds surrounding the lake



120 W Main Street
West Dundee, IL 60118

AES Headquarters
17921 Smith Road
Broadhead, WI 53520

A. Cover Letter

March 16, 2021

Shaun Nordlie
General Manager
Apple Canyon Lake Property Owners Association
14A157 Canyon Club Drive
Apple River, IL 61001

Re: Proposal for Preliminary & Final Design Plans for Winchester Bay Stream Reach 1.

Dear Shaun,

Thank you for the opportunity to provide this proposal for services related to Preliminary & Final Design Plans for the proposed Winchester Bay Stream Reach 1 Restoration Project. For your review, we have enclosed our scope of work based on our understanding of your request for services.

AES was acquired by Resource Environmental Solutions, LLC on February 5, 2021 and is undergoing a name change to RES Great Lakes, LLC. This entity is now a wholly-owned subsidiary of Resource Environmental Solutions, LLC (RES), and all work will be conducted by trusted AES staff, who now have access to the support of RES, without disruptions to your service during our integration. The same experienced and customer-focused AES staff, with whom you have longstanding relationships, will be guiding and performing the services required for this proposal. RES commits to AES' continuity and allocation of quality service.

Once reviewed and signed, please return this Agreement according to the instructions on the signature page.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve R. Zimmerman", followed by a horizontal line.

Steve R. Zimmerman M.S.
Principal Restoration Ecologist
RES-AES
120 West Main Street
West Dundee, IL 60118
Cell: 773-507-0982
Email: szimmerman@res.us

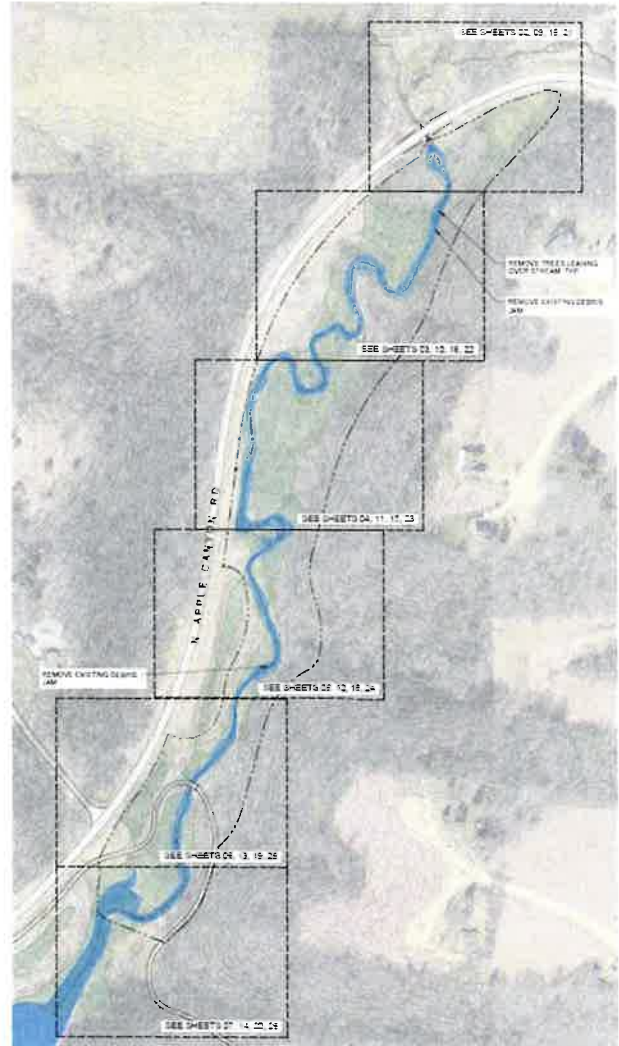


B. Scope and Fee

Task 1. 1' Topographical Survey

RES-AES will subcontract with HR Green to obtain a 1' topographic survey of the proposed project area (see project boundary below). The survey will primarily include the stream bottom along the centerline, cross sections throughout, and within the riparian areas of Winchester Bay Stream Reach 1 (approximately 2,500 lf & 10 acres). The survey will be done specifically to inform the hydraulic modeling (if required), geomorphic assessment, and the proposed natural stream restoration design. The survey will include:

- Ground shots shall be taken that are sufficient to generate 1-foot interval contours.
- All data will be Georeferenced (NAVD 88) drawing file compatible with AutoCAD Civil 3D DWG format with surface model (contours and TIN) via 3D drawing elements of LandXML.
- Ground control and elevations will be referenced to the nearest Survey Control Point.
- The survey will include ground shots along the stream centerline approximately every 15-20 feet.
- Ground shots shall be taken from the top of the stream banks to the edge of the project boundary.
- The survey will field locate all underground utilities as well as all visible structures such as manholes, outfalls, bridges, rim elevation, invert elevations/directions for all accessible structures and existing property and easement markers adjacent to the project. Markers will be surveyed using typical locating techniques such as metal detectors, and ground shots taken.
- The survey will include cross sections of the stream taken every 100' feet and more frequently along the stream's centerline (25-50') to capture meanders, changes in channel material, spring and seep locations, and other features. Cross sections will extend 50 feet beyond the top of each bank or to the project boundary, whichever is larger. Cross section measurements shall include bank slopes, bottom of stream channel and wetted width on both sides of the stream channel.



Product: 1' Topographical Survey
Lump Sum Fee: \$17,000

Task 2. Tree Survey

RES-AES will survey all desirable native trees only that are recommended to be preserved within the approximately 10-acre Winchester Bay Stream Reach 1 project area with the assumption that all other trees and shrubs will be removed as part of the proposed project. Each desirable tree will be tagged, assessed, and located using submeter GPS. The information will be tabulated in a Tree Inventory Table including tree tag #, species (common and scientific), DBH, condition, and general comments regarding quality. Resulting data will be used when developing the Tree Preservation/Removal portion of the Design Plan.

Product: Tree Survey & Summary Table
Lump Sum Fee: \$2,500



Task 3. Stream & Riparian Area Site Assessment

AES will use 1' topographic data (completed under Topographic Survey Task) and display it on a leaf-off color aerial photograph for use during a site visit. A RES-AES Ecologist, Landscape Architect, and Environmental Engineer will meet onsite with the client to determine the appropriate natural stream restoration and riparian area ecological restoration options along Winchester Bay Stream Reach 1. RES-AES will also record detailed notes and take photos related to the existing condition and proposed options. This information will be used to develop the Design Plan.

Product: Survey Site Notes & Photos

Lump Sum Fee: \$3,000

Task 4. Preliminary & Final Design Plans & OPCC

A RES-AES Ecologist and Landscape Architect will use the Conceptual Plan for Winchester Bay Stream Reach 1 and notes taken during the site visit as the basis for developing Preliminary & Final Design Plans. RES-AES will submit an electronic copy of both the Preliminary Design Plans to the Client for one review and comment. RES-AES will also incorporate all changes that may be required by permitting agencies. In addition, RES-AES will prepare an Opinion of Probable Cost for Construction (OPCC) for both the Preliminary and Final Design. The Final Design Plan will be signed by an Illinois Licensed Engineer. The Preliminary & Final Design Plans will include:

1. Title Sheet with the project location map, general notes, and materials/quantities schedule
2. Construction Specification Sheets including General Provisions, Selective Woody Tree & Brush Removal, Grading, Slope Protection, Rock Based Channel Stabilization, Soil Preparation, Native Seeding, Native Herbaceous Perennial Planting, Native Tree Planting, and Management of Plantings & Stream Structures
3. Existing Condition Sheets depicting existing topographic conditions, floodplain, wetland delineation, etc.
4. Tree Preservation Sheets showing desirable trees to remain and notes regarding debris clearing and removal
5. Layout and Grading Sheets showing existing and proposed topography contours and streambank/channel treatments
6. Stream Profile & Cross Section Sheets showing existing and proposed conditions. Cross sections will be provided every 50-100'
7. Planting Plan Sheets with associated native seed, plant plug, and tree lists and quantities
8. Erosion Control Sheets outlining erosion control measures
9. Detail Sheets with typical channel cross sections, riffle details, planting details, erosion protection details, etc.

Product: Preliminary & Final Design Plans & OPCC

Lump Sum Fee: \$30,000

Task 5. Environmental Permitting

AES will prepare a Corps (Rock Island District)/IEPA Joint Application for this project. For the Corps (Rock Island District)/IEPA Joint Application permit, RES-AES will submit the Final Design Plans, AES wetland delineation report (April 2020), and prepare appropriate applications to the Illinois DNR & USFWS for T&E Species, Illinois DNR-SHPO for historic properties, as well as prepare the application package and coordinate with the Corps project manager. RES-AES will also complete the Jo Daviess SWCD permit application for soil erosion and sedimentation control and will coordinate requests for additional information and/or revisions to the plan. RES-AES will also prepare an IEPA Stormwater Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) for the project. Note: The lump sum fee for this task includes Illinois DNR, Jo Daviess SWCD, and IEPA permit fees which are estimated to be approximately \$150, \$2,300, and \$750 respectively.

Product: Permit Applications

Lump Sum Fee: \$8,000



Task 6. Illinois DNR-OWR and/or Jo Daviess County Planning & Development

Under Illinois DNR-OWR requirements, stream projects with mapped floodway and/or with a drainage area greater than 1 square mile in an urban area and greater than 10 square miles in a rural area likely require a Floodway Construction Permit. The permit application requires the applicant to prepare detailed hydrology models to show that flood elevation will not increase as a result of the project. There is no mapped floodway or floodplain within the project boundary. The project is also in a rural area where the watershed to the project 2.43 acres, far less than the 10 acres required for a permit. We prepared a letter to IDNR-OWR on March 8, 2021 requesting a permit determination and followed up twice with no response. Since the drainage area to the project site is less than 10 square miles in a rural area, we assume that an Illinois DNR-OWR permit is not required.

Jo Daviess County Planning & Development Department is responsible for administering various permits related to building codes, zoning, etc. The Department assists the "Floodplain Officer" with administering the Floodplain Ordinance. The Floodplain Officer works with applicants to issue permits that ensure proposed developments do not increase flood heights or velocities. RES-AES contacted the Development Department on March 5, 2021 to obtain permit requirement information. According to the Department, a permit will not be required for doing "stream restoration" work. Rather, correspondence with Illinois DNR-OWR will be forwarded to the Department for their records.

Product: IDNR-OWR Application

Lump Sum Fee: \$500

Total Lump Sum Fee Tasks 1-6: \$61,000



C. Contract Terms and Conditions

Acceptance

In signing below, each party agrees to abide by all terms and conditions presented in this Agreement and the defined contents. Work will begin upon receipt of this signed authorization.

****PLEASE SIGN AND RETURN to Applied Ecological Services. An executed contract containing both signatures will be returned to you. This Agreement is not binding upon AES until executed by an officer of AES.**

Applied Ecological Services, Inc.

Signature:	Date:
Name:	
Title:	
P.O. Box 256, 17921 Smith Rd.	
Brodhead, WI 53520	
Phone: 608.897.8641	Fax: 608.897.8486
Email:	

Client:

Signature:	Date:
Name:	
Title:	
Company:	
Address:	
City, State, Zip:	
Phone:	Fax:
Email:	

Billing Address:

<input type="checkbox"/> Mark if same as above.	
Company:	
Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	Fax:
Email:	



Notes

1. This Agreement summarizes the information contained in the proposal and is necessary for acceptance of the contract. Along with the attached documents, including the Standard Terms and Conditions, this summary and signature page will define and govern the contract.
2. This Agreement may be executed in one or more counterparts (transmitted by facsimile or PDF electronic transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
3. AES will honor the pricing presented in this proposal for a period of 30-days and we may thereafter opt to modify pricing.

Standard Terms and Conditions

1. *Term and Termination*

These Terms and Conditions apply to the attached agreement and any subsequent agreements or changes to existing agreements for services between Applied Ecological Services, Inc. (hereafter AES) and the Client as defined in the agreement. Together these documents and any attachments constitute the Agreement.

- 1.1. **Termination.** Either party may terminate this Agreement, in whole or in part, at any time upon no less than fifteen (15) days written notice to the other party. In addition, AES shall have the right to suspend its provision of Services in the event Client defaults in timely payment for Services.
- 1.2. **Payment Upon Termination.** In the event of termination, all previous unpaid undisputed invoices submitted by AES to Client will be due and payable. AES will also be paid, under the terms of the Agreement, for all work performed and/or completed, and expenses incurred between the time period covered by the most recent invoice and the date of termination. Each party will bear its own termination expenses.
- 1.3. **Transition Period.** If this Agreement is terminated by either party, Client may require AES to continue any or all activities as described in the Agreement to allow for a reasonable transition period. This work would be conducted under the terms of this Agreement, which will remain in force until the transition period is completed.

2. *Invoicing and Payment*

- 2.1 **Invoicing/Payment Term.** AES shall invoice Client for Services performed on a periodic basis, usually monthly. Upon receipt of an invoice from AES, Client shall have thirty (30) days from the date of the invoice to pay the amount due, or to notify AES in writing of a bona fide dispute asserted in good faith as to one or more of the invoiced items. Unless otherwise provided, all Services, equipment, and materials furnished by AES shall be at the rates specified in AES' Rate Schedule, attached hereto as Exhibit A and incorporated by reference herein. The AES Rate Schedule applicable to this Agreement may be modified by the mutual written consent of AES and Client. Deposits paid according to the terms above will be applied to the final invoices under this Agreement.
- 2.2 **Taxes.** All charges are net of any applicable taxes (except income and payroll taxes). Any additional costs due to applicable taxes will be reimbursed by Client. Sales tax, if applicable, will be added upon invoicing.
- 2.3 **Currency.** All fees are stipulated in U.S. Dollars and must be paid to AES in U.S. Dollars.
- 2.4 **Method.** Payments to AES shall be made via Automated Clearing House (ACH) to AES' bank account using the information below. Please include invoice number(s) in remittance correspondence. If unable to make payments via ACH, checks made payable to "Applied Ecological Service, Inc." can be mailed to P.O. Box 256, Brodhead, WI 53520. Please indicate the AES invoice number(s) in check memo.

Bank Name:	The Bank of New Glarus/Sugar River Bank Branch
Bank Address:	2006 1st Center Ave, Brodhead, WI 53520
Routing Number:	075903912
Checking Account Number:	101753861

- 2.5 **Prevailing Wages.** Unless specifically set forth in the applicable Letter Agreement, Client represents that prevailing wages are not required for any of AES' Services under this Agreement. However, should AES be required



to pay prevailing wages, Client will pay AES the increased costs associated with the applicable prevailing wage rates, including any penalties, back wages, and administrative expenses.

3. *Liens*

AES acknowledges that Client does not own the real estate on which the Services described in this Agreement will be performed.

4. *Confidentiality*

4.1. **Definition and Exceptions.** For purposes of this Agreement, information shall be considered confidential if it is of a type generally understood to be confidential, or if the disclosing party specifically notifies the recipient party in writing, whether by labeling materials reflecting such information as "CONFIDENTIAL" or otherwise unambiguously informing the recipient party (hereinafter, "Confidential Information"). Such Confidential Information includes, but is not limited to, research, product plans, products, services, customers, markets, ideas, concepts, discoveries, techniques, specifications, methodologies, models, flow charts, data, software, developments, inventions, processes, designs, drawings, marketing plans, sales information, and financial information, and any information that constitutes a trade secret under the Uniform Trade Secrets Act or similar laws. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is already known to the recipient as shown by written records in its possession at the time such information is received; (ii) is already part of the public domain at the time of disclosure, or subsequently becomes part of the public domain through no fault of the recipient; (iii) is obtained on a non-confidential basis from a third party who lawfully disclosed the same to the recipient; or, (iv) is independently developed by an employee or consultant of the recipient who had no knowledge of or access to the information.

4.1. **Nondisclosure of Confidential Information.** During the term of this Agreement and for a period of three (3) years following termination, each party agrees to keep Confidential Information provided to such party by the other party in strict confidence and not to use any such Confidential Information other than in connection with the transactions contemplated by this Agreement, without the prior written consent of the other party. In addition, each party agrees not to misappropriate or threaten to misappropriate any trade secret information received, or any part thereof, for as long as such information remains a trade secret. Notwithstanding the foregoing, this Agreement shall not apply to the extent that information is subpoenaed or otherwise required by law to be disclosed by the recipient party, provided the recipient party shall use its best efforts to inform the disclosing party of any demand for such disclosure as soon as such demand is made, in order to allow the disclosing party the opportunity to seek protective relief.

4.2. **Use of Project Information.** Client agrees that AES may use Client's name and a general description of projects as a reference for other prospective clients, provided that no Confidential Information is disclosed.

5. *Ownership of Work Product*

5.1. **Work Product.** All preliminary or draft drawings, specifications or other documents and electronic data furnished by AES to Client under this Agreement ("Work Product") are deemed to be Instruments of Service, and AES shall retain the ownership and property interest therein, including the copyrights thereto. All final drawings, specifications, reports, and other documents or electronic data furnished by AES to Client under this Agreement shall be deemed to be the property of Client.

5.2. **Client's Limited License.** Upon Client's payment in full for all work performed under this Agreement, AES shall grant Client a limited license to use the Work Product in connection with Client's execution of the applicable project, and the drawings, specifications and other documents prepared by AES for the project may be retained by Client. Client may make changes, additions, and deletions to the applicable project design, in whole or in part, conditioned on Client's express understanding that such use of the Work Product as modified by Client is at Client's sole risk and without liability or legal exposure to AES.

5.3. **Use.** Any documents generated by AES are for the exclusive use of Client. Any use by third parties or use beyond the intended purpose of the document will be at the sole risk of Client unless otherwise agreed upon by AES in writing. If Client uses the design materials on any project other than the Project for which it was developed (a "Subsequent Use"), Client agrees that it shall do so at its sole risk and without liability or legal exposure to AES.



Client further agrees that it shall defend, indemnify and hold harmless AES from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorney's fees, arising out of or resulting from such Subsequent Use.

6. *Insurance*

- 6.1. **Coverage.** At all times during the term of this Agreement, AES shall, at its own expense, maintain insurance coverage of the kind and in the minimum amounts listed in Exhibit B.
- 6.2. **Waiver of Subrogation.** To the extent possible, any of the parties' insurance policies provided under the provisions of this Agreement, or which may be used in relation to this Agreement, shall contain waivers of subrogation in favor of the other party, by endorsement or otherwise, it being the intent of the parties that the insurance policies shall protect both parties. The parties release each other from liability covered by the insurance for which subrogation is waived.
- 6.3. **Additional Coverage.** Upon advance written notice, AES shall provide additional amounts or kinds of insurance as may reasonably be deemed necessary by Client in connection with the ongoing nature of operations and changes in exposure, but only to the extent the insurance is commercially available, and provided Client pays the cost of said coverage.
- 6.4. **Notice of Cancellation.** The above-required insurance shall be maintained by AES during the term of this Agreement, and shall not be canceled, altered, or amended by AES without thirty (30) days advance written notice to Client.

7. *Limitation of Liability*

With respect to any claim covered pursuant to the terms and conditions of AES' liability insurance policies carried pursuant to this Agreement, Client agrees that AES' total liability for acts, omissions, or damages, shall not exceed the available limits of coverage as set forth in such insurance policies.

Notwithstanding any other term of this Agreement to the contrary, in no event shall AES, (or its employees, agents, successors, or assigns) be liable to Client or any third party claiming through Client for indirect, special, incidental, consequential, exemplary, or punitive damages of any nature (including damages for loss of revenue, profits, business interruption, loss of business information, loss of capital, loss of technology, loss of data, increased costs of operation, litigation costs and the like) whether based upon a claim or action in contract, tort (including negligence), or any other legal or equitable theory, in connection with the supply, use or performance of the Services provided by AES to Client, regardless of whether AES has been advised of the possibility of such damages or such damages were reasonable foreseeable.

8. *Indemnification*

- 8.1. **AES' Indemnification of Client.** To the fullest extent permitted by law, AES shall indemnify and hold harmless the Client, its officers, directors, employees or agents, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work on a project subject to this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) but only to the extent caused by the negligent acts or omissions of AES, its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused by a party indemnified hereunder.
- 8.2. **Client's Indemnification of AES.** To the fullest extent permitted by law, Client shall indemnify and hold harmless AES, its officers, directors, employees or agents, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work on a project subject to this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Client, its subcontractors (other than AES), anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused by a party indemnified hereunder.



9. *Independent Entities*

Client and AES are independent entities, and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture, or agency.

10. *Dispute Resolution*

- 10.1. **Direct Discussion.** If a dispute arises out of or relates to this Agreement or its breach, the parties shall use good faith efforts to settle the dispute through direct negotiation.
- 10.2. **Project Status During Dispute.** If the dispute does not result in the termination of the Agreement, AES shall continue providing Services during all dispute resolution proceedings. Client shall continue to make payments in accordance with this Agreement, except with respect to amounts in dispute in accordance with Section 2.
- 10.3. **Mediation.** If the dispute cannot be settled through direct negotiation, except with respect to a matter involving payment of an invoice, the parties shall engage in mediation prior to entering into litigation, and shall endeavor to resolve the dispute through the involvement of a neutral mediator. The Construction Industry Mediation Rules of the American Arbitration Association shall govern this process unless otherwise agreed. The costs of any mediation proceeding shall be shared equally by the parties. No legal action will be filed until mediation has concluded.

11. *Standard of Care / Warranties*

- 11.1. **Standard of Care.** All Services provided by AES shall be performed by appropriately qualified personnel, properly licensed whenever required, and shall meet all standards of industry skill, care and judgment ordinarily expected in the locality where the Services are provided.
- 11.2. **Warranties.** Construction work performed by AES includes a one (1) year warranty on materials and workmanship. AES warrants that such work shall be free from material defects. AES' warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the project was not intended, improper or insufficient maintenance, modifications performed by the owner or others, or abuse. AES warrants that all materials shall be new unless otherwise specified, of good quality, in conformance with the Agreement, if any, and free from defective workmanship. If within one year the Client does not promptly notify AES of defective work, the Client waives AES' obligation to correct any defective work as well as the Client's right to claim a breach of warranty with respect to that defective work. If any of the Services are eliminated, or if AES is not retained to perform subsequent phases, AES' responsibility will extend only to the Services it completes.

12. *Time for Performance*

- 12.1. AES' Services will be performed according to the schedule specified in the Letter Agreement or related Attachments approved by Client and AES and incorporated into this Agreement.
- 12.2. If the Services to be performed by AES are interrupted, disrupted, suspended, or delayed for any reason beyond the reasonable control of AES, the schedule of work and the date for completion will be adjusted accordingly. AES will be compensated for all reasonable increased costs resulting from such interruption, disruption, suspension, or delay.

13. *Miscellaneous*

- 13.1. **Entire Agreement.** This Agreement and any Attachments which are or may be made a part thereof, constitute the entire agreement between the parties regarding the subject matter thereof, and all agreements, representations, promises, inducements, statements and understandings, made prior to or contemporaneous with this Agreement, written or oral, are superseded by this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of the parties hereto. No other act, document, usage or custom shall be deemed to modify this Agreement.
- 13.2. **Governing Law and Jurisdiction.** This Agreement shall be deemed to be an Agreement made under the laws of the State of Wisconsin, and for all purposes it, plus any related or supplemental exhibits, schedules, documents, or notices, shall be construed in accordance with and governed by the laws of such state. Both parties agree that the federal and state courts located in Wisconsin are an appropriate venue for any dispute between the parties,



and both parties hereby submit to the jurisdiction of such courts. CLIENT AND AES WAIVE ANY RIGHT TO A JURY TRIAL REGARDING ANY DISPUTE BETWEEN THE PARTIES.

- 13.3. **Construction / Headings.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing the instrument to be drafted. The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any section or provision hereof.
- 13.4. **Force Majeure.** Notwithstanding anything contained in this Agreement to the contrary, if either party is prevented from performing any of its obligations hereunder by laws, orders, regulations or directions of any government having jurisdiction over the parties hereto, or any department, agency, corporation or court thereof, or by war, act of public enemies, strikes or other labor disturbances, fires, floods, acts of God, or any causes of like or different kind beyond the reasonable control of either party, then such party shall be excused from any failure to perform any such obligation to the extent such failure is caused by any such law, order, regulation, direction or contingency.
- 13.5. **Severability.** Each provision contained herein is severable from the Agreement and if one or more provisions are declared invalid, the remaining provisions shall nevertheless remain in full force and effect.
- 13.6. **Notices.** All notices pursuant to this Agreement shall be in writing and shall be given by certified mail or personal delivery (including overnight mail by private carrier) to the address set forth on the signature page to this Agreement, or to such other address as may be subsequently provided by written notice given in accordance with this section. Such notices shall be deemed given when delivered (including by overnight mail by private carrier) or, if by mail, effective when deposited in the U.S. Mail certified with return receipt requested, postage prepaid.
- 13.7. **Attorneys' Fees.** In the event either party shall be the prevailing party in any suit for damages for breach of this Agreement, including nonpayment of invoices, or to enforce this Agreement, or to enjoin the other party from violating this Agreement, such party shall be entitled to recover as part of its damages its reasonable legal costs and related expenses, including attorneys' fees, in connection with bringing and maintaining any such action.
- 13.8. **Successors and Assignees.** This Agreement will be binding on AES and Client, and their successors, trustees, legal representatives, and assigns. Neither party may assign or transfer any rights, responsibilities, or interest in this Agreement without the written consent of the other party and any attempt to do so without such consent may be void. Nothing in this section will prevent AES from employing subcontractors or subconsultants to assist in the performance of Services under this Agreement.
- 13.9. **Waiver.** The failure of either party in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement, or the waiver by either party of any breach of the terms or conditions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.
- 13.10. **Survival.** All obligations of Client regarding amounts owed to AES and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.
- 13.11. **Exhibits and Attachments.** All Exhibits and Attachments are incorporated and made part of this Agreement for all purposes.
- 13.12. **Counterparts / Signatures.** This Agreement may be executed in one or more counterparts (transmitted by facsimile or PDF electronic transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



APPLIED ECOLOGICAL SERVICES

To: Shaun Nordlie & Kelly Weede (Apple Canyon Lakes Property Owners Association)
From: Steve Zimmerman M.S. (AES Principal Ecologist)
Cc: Jenna Andresen PLA (AES Landscape Architect), AES File
Date: February 1, 2021
Re: Winchester Bay Stream Reach 1 Permit Requirements Memo

On February 1, 2021 Applied Ecological Services, Inc. (AES) performed a permit investigation related to the proposed Winchester Bay Stream Reach 1 Restoration Plan. Based on the investigation, the following permits will likely be required prior to construction:

US Army Corp of Engineers-Rock Island District

AES performed an onsite wetland delineation in April 2020 which identified Waters of the US (Winchester Bay Stream Reach 1) and surrounding wetlands. All of these wetland features are under the Jurisdiction of the US Army Corps of Engineers-Rock Island District. Hence, all permanent and temporary wetland impacts associated with the proposed stream restoration project will require a permit from the Corps. Rock Island District has Nationwide, Regional, and Individual permits. Since Winchester Bay Stream Reach 1 exceeds 2,000 linear feet, an Individual Section 404 Permit will likely be required. There is no known permit fee.

Illinois Environmental Protection Agency

Illinois EPA requires a National Pollution Discharge Elimination System (NPDES) General Construction Permit (GCP) for all construction sites exceeding 1 acre. Therefore, the Winchester Bay Stream Reach 1 Project will require a Notice of Intent (NOI) to be submitted to Illinois EPA along with a Storm Water Pollution Prevention Plan (SWPPP). The NPDES permit requires various soil erosion and sediment control monitoring and reporting during construction. A Notice of Termination (NOT) must then be submitted following project completion. There is a permit fee of \$750 for all projects exceeding 5 acres.

Illinois Department of Natural Resources

Illinois DNR has procedures under the Illinois Endangered Species Protection Act for entities proposing activities that could result in negative impacts to State Protected Threatened & Endangered Species & Habitats. Applicants use Illinois DNR's online EcoCAT database to request information from Illinois DNR related to the presence or absence of T&E species and habitats on the proposed construction site. If no impacts are anticipated then Illinois DNR issues a permit. If impacts are anticipated then Illinois DNR may require T&E surveys and/or special avoidance and monitoring practices during construction. There is a \$125 fee to use the EcoCAT program.

US Fish & Wildlife Service

The US Fish & Wildlife Services (USFWS) requires a Section 7 Consultation under the Endangered Species Act to confirm there are no Federally Threatened/Endangered Species & Habitats located on the construction site. This consultation is typically performed by the Client's Ecological Consultant. If no impacts are anticipated then USFWS issues a permit. If impacts are anticipated then USFWS may require T&E surveys and/or special avoidance and monitoring practices during construction. There is no permit fee related to performing the Section 7 Consultation.

Illinois DNR Historic Preservation Agency

Illinois DNR's Historic Preservation Division exists to ensure that proposed activities do not result in negative impacts to Historic Properties. The applicant uses the agency's Historic Architectural Resources Geographic Information System (HARGIS) Site Review to determine if historic properties are located on the site.

Jo Daviess County Soil and Water Conservation District

Jo Daviess County SWCD reviews proposed erosion and sediment control measures shown on construction plan sets and conducts site visits during construction to ensure that erosion control measures are in place and being maintained until site stabilization. Fees for obtaining SWCD sign off and inspections ranges from \$500-\$1,500.

Jo Daviess County Planning & Development

Jo Daviess County Planning & Development Department is responsible for administering various permits related to building codes, zoning, etc. The Department assists the "Floodplain Officer" with administering the Floodplain Ordinance. The Floodplain Officer works with applicants to issue permits that ensure proposed developments do not increase flood heights or velocities. Fees for obtaining a County permit are not known.

Illinois DNR-Office of Water Resources

Stream projects with mapped floodway and/or with a drainage area of greater than 1 square mile require a Floodway Construction Permit from Illinois DNR-Office of Water Resources. The permit application requires the applicant to prepare detailed hydrology models to show that flood elevation will not increase as a result of the project. Permit fees to obtain an IDNR-OWR Permit range from \$2,500-3,500.



Memorandum

To: ACL Board

Date: May 4, 2021

From: Rules & Regulations Commission

Memo #: 2021-48

Topic: Rules & Regulations: Guests – 1st Reading

Analysis: Staff brought housekeeping revisions to section III Guests to the Rules & Regulations Commission at their March 5, 2021 meeting. No further changes were recommended by Rules & Regulations at that meeting, and the Rules & Regulations Commission motioned to recommend the revised section to the Board of Directors for approval at their April 9, 2021 meeting.

Recommendation: No motion required at this meeting. For presentation & discussion only.

III GUESTS

Preamble: Property Owners are responsible for the activities of their Guests and any violation of the rules by a Guest will be charged against the Property Owner. In order that Guests may enjoy ACL in comfort and safety, an Amenity Tag Program has been adopted. The Amenity Tag(s) makes management and employees aware when non-members are present. All Property Owners must follow and are responsible for their Guests following the Amenity Tag Program. See Rules and Regulations, Article II above.

A. Definitions

1. ~~A~~ "Guest" is any invited friend, relative, or occupant of a Property Owner using the ACL facilities with or without the Property Owner being present.
2. Immediate family members are those members and their dependents living in Property Owner's household full time. The Property Owner's children and their spouses not living in the Property Owner's household are not considered immediate family.

~~B. Amenity Tags~~

~~See Rules and Regulations, Article II, Amenity Tags for Property Owners and Guests for rules applicable to Guests for use of Amenity Tags.~~

CB. Guest Parking Passes

1. Guest Parking Passes must be visible on vehicle dashboard, with pass number facing upward, while vehicle is parked on any ACL "members only" property.
2. A Guest Parking Pass is required for access to Nixon Beach.
3. A Guest Parking Pass is required for access to the Campground.
4. Misuse or unauthorized use of Guest Parking Passes is subject to fine.

Amended: April 20, 2013

Amended: March 19, 2016

Apple Canyon Lake Property Owners Association Committee/Commission Motion Card

Rules & Regs Committee/Commission

Date 4.9.21

I move:

Rules & Regs Commission recommends
to the A.C.L. Board to approve Sect. III
Guests Document as presented
in the attached

Action Taken

MOTION MADE BY: <u>Lyza Klyza</u>	VOTE RECORDED:
MOTION SECONDED BY: <u>Ken Tubbs</u>	YEA: <u>4</u>
CHAIR: <u>Dickie Serhan</u>	NAY: <u>—</u>
	ABSTAIN: <u>—</u>

Date Received _____ Given to _____ Date Completed _____

Open
discussion
about
COVID-19

Capital Projects Update