

## **Department of Port Control**

Ord. No.: 1304-2025

### **Council Summary**

The Department of Port Control (Department) is requesting authority to enter into one or more agreements with West Creek Conservancy for the purpose of implementing wetland mitigation programs, this will include, but not be limited to, land purchases, professional services for mitigation design and coordination, and mitigation monitoring, for the Department including Cleveland Hopkins International (CLE) and Burke Lakefront (BKL) Airports.

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#### **Background/Purpose:**

In 1998, CLE proposed expansion of existing facilities which included expansion of Runway 5R/23L, conversion of Runway 5L/23R to a taxiway, and construction of a replacement Runway 5L/23R. Due to natural resources in the proposed expansion area, a delineation of the wetland and stream resources within the 850-acre area was completed and identified twenty-nine wetlands which included 102.66 acres of wetland.

In June 2000, CLE applied to USACE for wetland impact of 88 acres and 7,900 feet of stream (Abram Creek and tributaries) for the expansion of the CLE facilities and included offsite stream and wetland mitigation options. The avoided wetland areas were indicated as the Avoidance Areas 2 and 3. In April 2001, the Ohio Environmental Protection Agency (OEPA) issued a Directors Final Findings and Orders (DFFOs) certifying the water quality impacts associated with the airport expansion. The DFFOs specified requirements to submit to OEPA for review of the final restoration plan and then to schedule and execute a series of projects.

In an April 2005 letter, it was indicated that the trees within the southwestern wetlands inhibit and have the potential in the future to inhibit navigable airspace at CLE. The letter references the Federal Aviation Administration Advisory (FAA) Circular that provides guidance on Hazardous Wildlife Attractants on or Near Airports written in 1997. The FAA and United States Department of Agriculture jointly published information on Wildlife Hazard Management at Airports written in 1999. Both documents strongly recommend the removal of stumps and trees 10 feet tall or taller within airport property to reduce airspace hazards and wildlife encounters.

In October 2005, CLE requested a minor modification of the U.S. Army Corp of Engineers (USACE) wetland permit that included conversion of vegetation in the Avoidance Areas 2 and 3 from forest to scrub shrub by cutting trees over eight feet in height, grubbing the tree stumps and planting shrubs. This was approximately 5-10 trees that were proposed for removal. The emergence survey was completed, and no bats were observed, and the trees were removed. Shrubs were planted in the wetland and the fencing was placed around the Avoidance Areas 2 and 3.

In the summer of 2008, a modification to the permit was requested by CLE: for an additional 0.14 acre of fill to complete the perimeter service road; to maintain the Avoidance Wetland Areas as scrub-shrub; and to modify the design of the Abram Creek culvert outlet. This was approved by USACE with the conditions that the area is covered with 75% natives and 10% or less invasives which would be verified through five years of monitoring and reporting. Following that activity, in summer of 2015, a compliance review issued by USACE indicated that the monitoring of Avoidance Areas 2 and 3 have been fulfilled.

During subsequent years to the present, a full-time United States Department of Agriculture employee has been monitoring and assisting in relocating wildlife in the Avoidance Areas 2 and 3 to prevent wildlife strikes. Annually, the Wildlife Hazard Assessment report indicated an abundance of wildlife activity at the southern end of the runway. In the summer 2023 the USDA Animal and Plant Health Inspection report recommended removal of the wetland located on the airfield at CLE to reduce wildlife hazards and increase aviation safety. The FAA concurred with the recommendation and suggested immediate action with proper coordination and in cooperation with local, state, and federal agencies. On September 5, 2024, the FAA specified the removal of the approximately 8-acre wetland at the southern portion of the airport property, which satisfied their requirements to maintain a minimum of 10,000 feet of separation of wildlife attractants and aircraft operating areas.

Acting on the recommendation of the FAA, CLE authorized a delineation of the area during the summer of 2024, the wetlands within Avoidance Areas 2 and 3 were delineated. Following delineation, discussions were initiated with USACE and OEPA regarding the jurisdiction of the wetlands and potential for mitigation. An Approved Jurisdictional Determination (AJD) request was submitted to USACE and the AJD was issued by USACE in February 2025 indicating the wetland within Avoidance Areas 2 and 3 is not a jurisdictional resource under Section 404 of the Clean Water Act. The wetland is regulated by OEPA under Section 401 of the Clean Water Act.

OEPA indicated that mitigation for the onsite wetland would be at 3:1 ratio based upon the original wetland delineation from 1999 which categorized this wetland as a Category 3. Under the 3:1 ratio, the impact of 8.794 acres equates to 26.382 credits and is comprised approximately of 14.124 credits of forested wetland, 3.801 acres of scrub-shrub wetland and 8.457 credits of emergent wetland.

### **Scope of Work:**

The availability of wetland credits within an established mitigation bank or an in-lieu fee program project within the watershed is limited. In previous meetings, OEPA indicated that due to the high number of mitigation credits required, they strongly suggest obtaining mitigation through limited purchases (only 1:1) from existing banks as it may deplete the availability of credits available for other projects. OEPA strongly suggested exploring the option of a Permittee Responsible Mitigation (PRM) project to satisfy mitigation credits. An in-watershed PRM project was explored and preliminary review of

two parcels are anticipated to satisfy the wetland mitigation requirements for the project. Credits will be satisfied by wetland creation, enhancement, and preservation and buffer enhancement and preservation.

The next steps for the mitigation portion of the project include delineation of the water resources, USACE and Ohio Rapid Assessment Method (ORAM) review of the site, submittal of the draft mitigation plan and design plans, submittal of the 401 Water Quality Certification (WQC) permit application to OEPA and approval. In addition, the PRM site is comprised of two parcels that will need to be purchased and then placed under permanent protection. West Creek Conservancy (WCC) will act as the long-term steward for the environmental covenant that will be required to satisfy mitigation requirements.

**Justification/Urgency:**

The wetland is regulated by OEPA under Section 401 of the Clean Water Act. The site found is a highly unique property well situated to satisfy OEPA's mitigation requirements for the project. Continuing pursuit of this property would prevent lost time and costs in the event the project is abandoned. Initial conversations with OEPA regarding this site are very favorable due to: the mitigation project location within the same watershed as the CLE Airport project (Black-Rocky River; Hydrologic Unit Code 04110001); the proximity to an existing mitigation bank (Grafton Swamp Wetland Mitigation Bank); high category (Category 3) wetlands abutting the eastern portion of the project; reduction in buffer requirements due to the existing project; opportunity for restoration of former agricultural fields; and conversion of land to restoration rather than development. No other sites contain these distinct qualities ensuring the satisfaction of the permit approvers (OEPA) and the project requirements. Stepping away from this site or pivoting away from this property would set back the timetable on the project with the likelihood of having to restart investigation of new site opportunities if there is a suitable location available.

**Anticipated cost:**

Not to exceed \$2,700,000

**CSB/MBE/FBE/DBE:**

Any and all contracts entered into will comply with the City of Cleveland's Office of Equal Opportunity and the Disadvantage Business Enterprise guidelines as applicable.