

**CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2013-42**

**AN ORDINANCE AUTHORIZING THE
MAYOR TO ENTER INTO A PURCHASE
AGREEMENT WITH THE OHIO WETLANDS
FOUNDATION FOR THE PURCHASE OF
WETLANDS MITIGATION CREDITS, AND
DECLARING AN EMERGENCY.**

WHEREAS, the discharge of dredged or fill material into waters of the United States and waters of the State of Ohio, including wetlands, is regulated pursuant to Section 404 of the Clean Water Act, 33 U.S.C. §1344, and/or Ohio Revised Code Chapter 6111; and

WHEREAS, the Ohio Wetlands Foundation has participated in the Interagency Review Team review process and received approval from the Interagency Review Team (which includes the Corps and Ohio EPA) to establish the Granger Wetlands Mitigation Bank and to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands and other waters pursuant to the Section 404/401 permit process and Ohio's Isolated Wetland Permit process; and

WHEREAS, the Corps and the Ohio EPA have agreed to the purchase of wetland mitigation credits to fulfill the City's requirement to mitigate wetland impacts in relation to the Clemens Road Relocation Project; and

WHEREAS, the City of Westlake, by the Mayor, upon the approval of Council, has offered to purchase wetlands mitigation credits at the Granger Wetland Bank from the Ohio Wetlands Foundation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

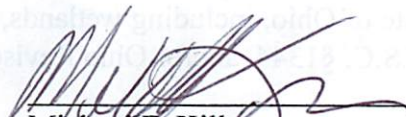
Section 1: That the Mayor be and he hereby is authorized and directed to enter into a Purchase Agreement with the Ohio Wetlands Foundation for wetlands mitigation credits at the Granger Wetland Bank, which Purchase Agreement is in a form substantially as attached hereto and made a part hereof as though fully rewritten herein and marked Exhibit "A" with such revisions not affecting the substance of such Agreement as are approved by the Mayor and the Director of Law.

Section 2: That the Director of Finance be and he is hereby authorized and directed to issue warrants of the City of Westlake in the amounts set forth in said Purchase Agreement in an amount not to exceed Fifty-Four Thousand Six Hundred Dollars and Zero Cents (\$54,600.00).

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 10, Article XI of the Charter of the City of Westlake.

Section 4: That this legislation is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare, and for the further reason that it is immediately necessary to purchase wetlands mitigation credits in conjunction with the Clemens Road Relocation Project, and further provided it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 3/7/13




Michael F. Killeen
President of Council

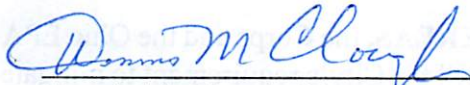
Presented to Mayor: 3/8/13

Approved: 3/8/13

ATTEST:



Denise L. Rosenbaum, Clerk of Council



Dennis M. Clough, Mayor

I, Denise L. Rosenbaum, Clerk of Council of the City of Westlake do hereby certify that Ordinance/Resolution no. 2013-42 adopted 3/7/13 was duly posted on 3/11/13 and remained posted for a period of 15 days thereafter in not less than 2 of the most public places in the City as determined by the Charter of said City.

**WETLAND MITIGATION PURCHASE AGREEMENT
GRANGER WETLANDS MITIGATION BANK**

WHEREAS, the discharge of dredged or fill material into waters of the United States and waters of the State of Ohio, including wetlands, is regulated pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and/or Ohio Revised Code Chapter 6111; and

WHEREAS, entities planning to place dredged or fill material into waters of the United States or waters of the State of Ohio, including wetlands, must comply with standards and conditions imposed by the Army Corps of Engineers (the "Corps") and/or the Ohio Environmental Protection Agency (the "Ohio EPA") including, in many cases, the mitigation of wetland impacts; and

WHEREAS, the Ohio Wetlands Foundation ("the Foundation") has participated in the Interagency Review Team ("IRT") review process and received approval from the IRT (which includes the Corps and Ohio EPA) to establish the Granger Wetlands Mitigation Bank and to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands and other waters pursuant to the Section 404/401 permit process and Ohio's Isolated Wetland Permit process; and

WHEREAS, the Corps and the Ohio EPA have agreed to consider the purchase of wetland mitigation credits in an appropriate service area approved by the IRT to fulfill an entity's requirement to mitigate wetland impacts.

THEREFORE, WESTLAKE ("Client") and the Foundation agree they will comply with the following guidelines and procedures by which Client will purchase wetland mitigation credits from the Foundation, representing the restoration of wetlands in the State of Ohio which will be permanently maintained and which will serve to mitigate wetland impacts permitted under Sections 404 and 401 of the Clean Water Act and in accordance with ORC Chapter 6111.

I. RESERVATION OF CREDITS AND PAYMENT TERMS FOR THE CLIENT

A. Pursuant to the requirements of Sections 401 and 404 of the Clean Water Act and the regulations promulgated thereunder and/or ORC Chapter 6111, Client is obligated to mitigate for impacts to 1.3 acres of jurisdictional wetlands and — acres of isolated wetlands at its CLEMENS ROAD site located at 1145 CROCKER RD in the CITY WESTLAKE of WESTLAKE, _____ County, Ohio. Based on the sale price of \$42,000 per acre of mitigation credit, the Client hereby agrees to pay the Foundation the amount of \$ 54600 in consideration for the purchase of 1.3 acres of non-forested and — acres of forested wetlands mitigation credits at the Granger Mitigation Bank. The Foundation will reserve the necessary wetland credits (acreage) for a period of six (6) months (the "Reservation Period") upon receipt of a signed Purchase Agreement and a deposit payment of \$ 5460.00 (equal to 10% of the total sale price). If

Client has not received the necessary approvals pursuant to Section 404 and/or 401 of the Clean Water Act or the Ohio Isolated Wetland Permit program during the Reservation Period, the Foundation will extend the Reservation Period for an additional 6 months upon receipt of an additional 10% deposit. This method of extending the Reservation Period (six months at a time) shall continue for a maximum period of 24 months. The remaining balance shall be paid within 24 months of the contract initiation date. If the remaining balance is not paid in full within 24 months, a new agreement will be necessary and the current price of mitigation credits will be applied to the new contract. If a new contract is completed, the deposit payments shall be applied towards the cost of credits in the new mitigation purchase agreement so long as all deposit payments have been made in timely manner by the Client.

B. The Client's initial 10% deposit is refundable if within the initial 6-month Reservation Period the Corps or the Ohio EPA denies Client's request for a permit for the wetland impact or if Client elects to withdraw their permit application provided the Client notifies the Foundation in writing of the denial of its permit or its intention to withdraw its permit application prior to the expiration of the initial 6-month Reservation Period. After the initial 6-month Reservation Period all deposit payments are non-refundable. If the Reservation Period expires due to lack of timely deposit payments, the wetlands credits will not be reserved for Client but will be available on a first-come basis to all clients of the Foundation. The Foundation will provide written notification of the termination of this Agreement to the Corps and/or Ohio EPA as applicable.

C. Within thirty (30) days of issuance of the Clean Water Act Section 404 permit and, if necessary, the Section 401 Certification or Ohio Isolated Wetland Permit, Client will tender the outstanding balance of the cost of the mitigation credits. Client will also provide the Foundation with a copy of the Section 404 permit and, if applicable, the Section 401 Certification or the Ohio Isolated Wetland Permit or other approval to proceed. If payment is not received by the Foundation by the end of the thirtieth day after the Permit Issuance Date the Client will be considered to be in Default of Payment. The Permit Issuance Date is the date of the wetland fill permit (Isolated Wetlands Permit, Clean Water Act Section 401/404 permits) issued for the project. If more than one wetland fill permit is required for the project identified in this agreement then the date of the most recent permit shall be considered as the Permit Issuance Date. Should the Client be in Default of Payment, a late payment penalty of \$500 or 2.0% interest per month, whichever is greater, shall be applied to the outstanding balance from the Permit Issuance Date for each month or portion thereof until payment is received in full. It is the sole responsibility of the Client to ensure that they adhere to the terms of this agreement, including timely payment, and to the terms of the permit(s) issued to it for the project described in paragraph I(A).

D. If the Client is in Default of Payment for greater than 90 days the Foundation may, at its sole discretion, elect to sell the reserved credits to a different client. In this case, the Client, the Corps and/or Ohio EPA (as applicable) shall be notified by the Foundation that this agreement has been terminated and the credits are no longer held in reserve for the Client. The Client's deposit payment will be forfeited to the Foundation at this time and may be applied to future mitigation purchases of the Client at the discretion of the Foundation.

E. The Client shall have no other obligation other than the payments detailed in this agreement for future maintenance or remedial measures of the Granger Mitigation Bank.

II. OBLIGATIONS OF OHIO WETLANDS FOUNDATION

A. The Foundation has available for sale mitigation credits at the Granger Mitigation Bank which have been approved by the IRT to mitigate for certain wetland impacts.

B. In consideration for the payment of \$54,600 (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, the Foundation hereby agrees to provide 1.2 acres of wetlands mitigation credit (as per paragraph I(A) of this agreement) at the Granger Mitigation Bank for the benefit of Client hereunder. The Foundation shall have all responsibility for assuring the restoration and the monitoring and maintenance of the wetlands as provided herein.

C. The Foundation will provide written confirmation to the Client that full payment has been made for the purchase of wetland mitigation credits specified in paragraphs IA of this agreement.

OHIO WETLANDS FOUNDATION

Signed By: _____
Vincent E. Messerly, President

Date: _____

CLIENT CITY OF WESTLAKE.

Signed By: _____

Printed Name: DENNIS CLOUGH

Title: MAYOR

Date: _____

Address: 2700 HILLIARD BLVD
WESTLAKE OH 44145

Telephone: 67-4145

Facsimile: ~~360-10-CITY OF WESTLAKE DRG~~
440-67-4168

CLIENT'S CONSULTING FIRM

Firm Name: ROBERTA KELLY

Contact Name: CITY OF WESTLAKE

Address: 27700 HILLIARD
WESTLAKE OH 44145

Phone Number: 440-67-4145

Fax Number: 440-67-4168



OHIO WETLANDS FOUNDATION

Sign-up for OWF Updates
Enter Your Email Address:

Who We Are Mitigation Banks Specialized Projects Resource Center Contact Us

Trumbull Creek · Pearson · Pine Brook · Big Darby-Hellbranch · Fish Creek · Granger · Little Stillwater

SITE DATA

FINAL APPROVAL RECEIVED ON MAY 25, 2012 • 21.1 acre site • 25.3 credits is the projected initial credit release (forested and non-forested) • credit price \$42,000/acre. Opportunities for completion of stream mitigation available on the project site (contact us for details)

HABITAT

- Wetlands Restoration:**
- Forested Wetlands
 - Sedge/Wet Meadow
 - Scrub/Shrub Wetlands
 - Shallow Emergent Wetlands

- Wetlands Rehabilitation Wetlands Preservation Upland Forest:**
- Restoration
 - Enhancement
 - Preservation

SERVICE AREA

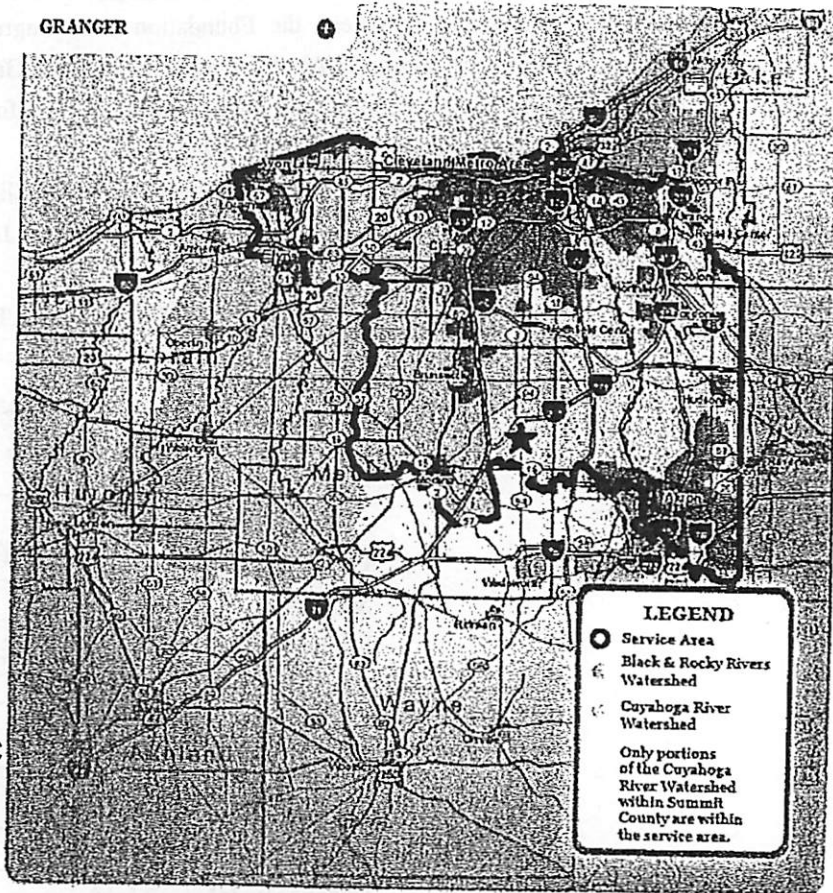
- Part of the Black-Rocky HUC including these 10-digit HUC's: 0411000101, 0411000102 & 0411000106
- The portion of the Cuyahoga HUC (04110002) located in Medina, Summit and Cuyahoga Counties.

STEWARDSHIP

Long-term owner and managing partner: Ohio Division of Wildlife



GRANGER



The Granger Wetlands Mitigation Bank is located in Granger Township, Medina County, within the Erie/Ontario Drift and Lake Plain ecoregion. The project will restore a diverse assemblage of habitats including forested wetlands, scrub/shrub wetlands, sedge/wet meadows, emergent wetlands and forested uplands. The site includes a large area of muck soils. The farm was used for the production of vegetables and row crops for many decades.

The site contains two areas completely dominated by invasive species, primarily *Phalaris arundinacea* (reed canary grass). These areas will be rehabilitated to diverse shallow emergent, wet meadow, and scrub/shrub wetlands through invasive vegetation removal and control and supplemental plantings of native plants.

Additionally, 3,160 feet of Granger Ditch Lateral 1 exists along the western border of the property. These two streams provide an opportunity for individual stream mitigation projects on the site. Please call Ohio Wetlands Foundation for details.