



ENGINEERING SERVICES

To: Mayor and Town Council

From: Hulon T. Webb, Jr., Interim Executive Director of Development and Infrastructure Services

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 28, 2022

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Mitigation Credit Sales Agreement between Wetlands Management, L.P., and the Town of Prosper, Texas, related to the construction of Fishtrap Road from Stuber Elementary to the Dallas North Tollway.

Description of Agenda Item:

The construction of Fishtrap Road from Stuber Elementary to the Dallas North Tollway project crosses four stream corridors that are protected under Section 404 of the Clean Water Act. The design process included identifying these protected waters and working to limit impacts. Due to the nature of these water courses position in the roadway corridor, types of aquatic features, and length of impacts, a permit was acquired for the unavoidable impacts. This permit demonstrated all the avoidance and minimization efforts required to secure the permit, but the impacts still required compensatory mitigation. Compensatory mitigation that the regulatory agencies utilize is accomplished through purchasing mitigation credits from a mitigation bank. Mitigation banks are essentially areas where entities create streams and wetlands to sell to permittees who are forced to impact protected areas. Wetlands Management Mitigation Bank will provide the wetlands credits necessary to satisfy the wetlands mitigation obligation for this project.

The Town investigated developing its own responsible mitigation for improvements to offset the mitigation costs for the unavoidable impacts. Prior to 2010 it was standard practice for a municipality to undergo a mitigation plan for improvements to offset the mitigation costs on a project. However, a study conducted by the National Academy of Science found that most “permittee responsible mitigation” sites failed over time. As a result, the USACE has determined that issuing permits with permittee responsible mitigation had a net loss of wetlands and waters of the United States. The Fort Worth District of the U.S. Army Corps of Engineers (USACE) has adopted the position that was established in the federal register based on the study, that they will not allow any permittee responsible mitigation for improvements if there is an open and operational mitigation bank that serves the site. As there are operational mitigation banks serving this area, the Town must purchase mitigation credits.

Budget Impact:

The cost of wetlands credits is \$17,800. The FY 2021-2022 Capital Improvement Program includes \$18,000,000 for the 2012-ST Fishtrap Road (Elem – DNT) project. The funding source is Account No. 750-6610-10-00-2012-ST.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed and approved the Mitigation Credit Sales Agreement as to form and legality.

Attached Documents:

1. Mitigation Credit Sales Agreement
2. Location Map
3. Areas of Impact Map

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Mitigation Credit Sales Agreement between Wetlands Management, L.P., and the Town of Prosper, Texas, related to the construction of Fishtrap Road from Stuber Elementary to the Dallas North Tollway.

Proposed Motion:

I move to authorize the Town Manager to execute a Mitigation Credit Sales Agreement between Wetlands Management, L.P., and the Town of Prosper, Texas, related to the construction of Fishtrap Road from Stuber Elementary to the Dallas North Tollway.