



March 29, 2022

The Honorable Tim Schaffer
Senate Building, Room 128
Columbus, Ohio 43215

Re: Substitute HB 175 Pending before the Senate Agriculture and Natural Resources Committee

Chairman Schaffer,

On behalf of organizations consisting of Ohio's developers, non-profit wetland mitigation banks, and the broader business community, we would urge your support for Substitute HB 175. The substitute bill was developed as a result of the recent regulatory changes at the federal level with respect to the definition of "Waters of the United States" (WOTUS). Sub. HB 175 is important legislation designed to provide consistency when it comes to state regulations of ephemeral features determined to be jurisdictional by the federal government. The legislation strikes an equitable balance between eliminating unnecessary red tape for economic development and environmental stewardship.

Recent changes have resulted in ephemeral features being regulated at the federal level by the U.S. Army Corps of Engineers. The substitute bill narrows the exclusion of ephemeral features from the definition of waters of the state included in the House-passed version of HB 175 by clarifying Ohio's definition of waters of the state to include only those ephemeral features that constitute a WOTUS. It is important to note that the substitute bill maintains language in the bill specifying that the legislation does NOT affect the Ohio Environmental Protection Agency's (Ohio EPA) authority to regulate the discharge, deposit, dumping, or placement of waste or debris in an ephemeral feature.

Sub. HB 175 also specifies the mitigation requirements applicable to permanent and temporary impacts to ephemeral features determined to be waters of the state. Sub. HB 175 requires applicants to provide compensatory mitigation for authorized impacts to ephemeral features. Several different forms of compensatory mitigation options are allowed, including the utilization of enhanced stormwater best management practices to help ensure that downstream water quality is not degraded. The mitigation requirements established in the substitute bill create a comprehensive and reliable set of mitigation practices that can be relied upon by permit applicants as opposed to inconsistent and arbitrarily changing mitigation requirements they currently face.

The substitute version of the bill also includes new requirements for state agencies that participate in the Interagency Review Team (IRT) process. The IRT is responsible for facilitating the establishment of

mitigation banks and in-lieu fee (ILF) programs within the State of Ohio. It is composed of representatives from the Buffalo, Huntington, and Pittsburgh Districts of the Corps, USEPA Region 5, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service (NRCS), the Ohio EPA, and the Ohio Department of Natural Resources. The IRT develops stream and wetland mitigation guidelines and provides those interested in stream and wetland mitigation banking or ILF programs with statewide guidelines to establish mitigation projects within the State of Ohio. The substitute bill adds necessary transparency to this process by requiring minutes to be taken at all meetings of the IRT by Ohio's representatives and makes the meetings subject to public record laws. It also requires the addition of the Ohio Department of Transportation to the state IRT representatives. Changes in the bill also require the Ohio EPA to follow the rule-making process prior to adopting mitigation procedures recommended by the IRT. Extensive work was done with the Ohio EPA to ensure that these changes do not prevent the state's ability to issue 401 water quality permits.

The substitute version of HB 175 also includes language from SB 19, which clarifies the long-standing practice and precedent that property owned by 501(c)(3) non-profit conservation organizations and protected with conservation easements are not subject to property taxes. SB 19 was unanimously passed by the Ohio Senate in February 2021 and had numerous proponents.

We would like to thank Rep. Hillyer and this Committee for their diligent work on developing the substitute version of the bill. We urge your support as it will provide regulatory stability for economic development while establishing a mitigation framework premised upon comprehensive industry and regulatory feedback.