



DATE: August 2, 2021

MEMO TO: Terry Wilke, Chair
Planning Committee

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Recommend approval of a Resolution approving a new Letter of Intent (LOI) with the Waukegan Port District (WPD) regarding the proposed expansion of the runway at Waukegan National Airport, and for the potential transfer to WPD of fee simple interest in a portion of Waukegan Savanna Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections, Leadership.

FINANCIAL DATA: There is no financial impact at this time.

BACKGROUND: The WPD owns and operates Waukegan National Airport. WPD has been working for more than a decade on the proposed replacement of its Runway 5/23 with a new, longer runway that would allow larger airplanes to utilize the airport, enabling direct flights to and from Europe without refueling stops (the “Runway Project”). In addition, according to the WPD, the existing 6,000-foot runway is near the end of its usable life, and the Federal Aviation Administration now requires 7,000-foot runways to meet safety requirements.

In 2016 and 2017, WPD and IDOT asked the District whether it would consider transferring land rights to WPD to accommodate the Runway Project. IDOT’s highway division needed this confirmation because it is planning improvements to Green Bay Road (State Route 131), including the potential lowering of the road under the new, longer runway. IDOT’s Aeronautics Division needed this confirmation because it is primarily responsible for administering federal funds for airport improvements in Illinois and it wanted to ascertain whether the airport construction project is feasible.

To indicate its support for the Runway Project to WPD and other relevant agencies, the District’s Board, at its April 11, 2017 meeting, approved a Letter of Intent (LOI) with WPD. The LOI outlined the terms and conditions of a proposed Intergovernmental Agreement (IGA) between the WPD and the District. The original approved LOI provided that the District would convey to WPD fee simple ownership of approximately 38.7 acres and grant to WPD perpetual easement rights over an additional approximately 45.45 acres. The LOI provided that the WPD and District would participate in good faith negotiations towards an IGA for a period of not less than 180 days following the LOI’s April 17, 2017 approval and that, thereafter, either party could unilaterally terminate the LOI.

Since the original LOI was approved, WPD has sought changes, which have been reviewed by the Planning Committee as policy direction requests. First, on June 26, 2017, at WPD's request, the Planning Committee gave policy direction to change the request for approximately 45.45 acres of easement rights to a request for approximately 13.6 acres of fee simple ownership, changing the request of total land rights to 52.3 acres of fee simple ownership and no permanent easements. Second, on June 3, 2019, the Planning Committee gave policy direction regarding a request from WPD to approve a formal extension of the "good faith negotiations" period set forth in the LOI, as WPD works through the environmental assessment (EA) process for the project which has taken longer than the WPD initially estimated when the LOI was approved, thus slowing the process towards execution of an IGA. To allow the WPD time to complete the EA, the Planning Committee reached a consensus to extend the time to approve a mutually acceptable IGA to 150 days from the completion of the EA. WPD now anticipates that a final EA will be complete by January 31, 2022.

WPD has asked the District to enter into a new LOI, which would replace the 2017 LOI. This new LOI would capture all the changes that have occurred since the original LOI was signed, including the two policy directions provided by the Planning Committee. Attached is a copy of the proposed new LOI. The new LOI is not a contract and therefore, with limited exceptions, is non-binding. If the District Board approves the new LOI, within 30 days after receipt of the draft EA (estimated to be received in October, 2021), the District and the WPD shall commence good faith negotiations towards an IGA and diligently pursue such negotiations for a period of not less than 150 days. If, within such 150-day period, the parties have not approved a mutually acceptable IGA, then either party, in its sole and absolute discretion, may terminate the new LOI.

While the new LOI (like the original LOI) is not a binding contract, it does include certain short-term obligations. For example, WPD must undertake an appraisal process for the land that it desires to acquire from the District, so that both parties, when they are actively negotiating the IGA, will have a reasonable understanding of their respective opinions concerning the fair market value of that land. WPD is also required to investigate environmental impacts and whether wetland or other mitigation will be necessary. And, both parties are required to share certain relevant information.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR AUGUST MEETING
AUGUST 10, 2021**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution Approving a Letter of Intent with the Waukegan Port District regarding Runway Expansion at Waukegan National Airport,” and requests its approval.

PLANNING COMMITTEE:

Date: _____ Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING A LETTER OF INTENT WITH THE
WAUKEGAN PORT DISTRICT REGARDING RUNWAY EXPANSION AT
WAUKEGAN NATIONAL AIRPORT**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns certain property commonly known as Waukegan Savanna Forest Preserve (the “District Property”); and

WHEREAS, the Waukegan Port District is a political subdivision of the State, a body politic, and a municipal corporation that owns and operates a public airport known as Waukegan National Airport (the “Airport”); and

WHEREAS, the Illinois Department of Transportation (“IDOT”) (through its aeronautics division) has certain regulatory jurisdiction with respect to the Airport, including over certain federal programs for financing Airport improvements, and (through its highway division) has regulatory jurisdiction with respect to Green Bay Road, which is adjacent to the Airport; and

WHEREAS, at the Airport, Waukegan Port District currently operates two primary runways, one of which is designated Runway 5/23 (the “Runway”); and

WHEREAS, the Waukegan Port District has represented to the District that the long term viability of the Airport is threatened because of a series of factors, including:

- The Federal Aviation Administration (“FAA”) has determined that the existing Runway does not meet modern design and safety criteria,
- The Runway is nearing the end of its usable life and will need to be replaced with a new Runway proposed by the Waukegan Port District,
- The FAA concurs that the new Runway proposed by the Waukegan Port District would satisfy the current and forecasted purposes and needs of the Airport and its users, and
- IDOT plans to widen Green Bay Road, adjacent to the Airport, which would shorten the Runway, unless an alternative design is adopted; and

WHEREAS, to address these factors, the Waukegan Port District proposes to (i) replace the existing Runway with a new 7,000-foot Runway that would meet all FAA safety requirements and (ii) integrate the new Runway into IDOT’s widening of Green Bay Road, which would, to accommodate the longer new Runway, pass under the new Runway (collectively, the “Project”); and

WHEREAS, the District Property is adjacent to the Airport; and

WHEREAS, to accommodate the Project, Waukegan Port District has requested that the District convey to Waukegan Port District fee simple title to approximately 52.3 acres of the District Property (the “Conveyance”); and

WHEREAS, on April 11, 2017, the District’s Board approved a Letter of Intent (the “Original LOI”) outlining the terms and conditions of a proposed intergovernmental agreement between the Waukegan Port District and the District, pursuant to which the District would approve the Conveyance, and which would include several other rights and obligations of the parties (an “Intergovernmental Agreement”); and

WHEREAS, in light of certain changes that have occurred since the Original LOI was approved, the Waukegan Port District has requested that it and the District approve a new letter of intent for an IGA; and

WHEREAS, any future Intergovernmental Agreement would be effective only if and when it is approved by the corporate authorities of both the District and the Waukegan Port District; and

WHEREAS, pursuant to the Local Government Property Transfer Act 50 ILCS 605/0.01 et seq., the District is authorized to transfer its right, title, and interest in its property to any municipal corporation for the making of any public improvement or for any public purpose, upon such terms as may be agreed to by the District and the municipal corporation; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District and the Waukegan Port District may contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., any power, privilege, function, or authority exercised by a public agency, including the District and the Waukegan Port District, may be exercised, combined, transferred, and enjoyed jointly with any other public agency to the extent not prohibited by law;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois **THAT:**

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2: Approval of Letter of Intent. The letter of intent, in substantially the form attached hereto (the “Letter of Intent”) is hereby approved. The Executive Director of the District is authorized and directed to execute the Letter of Intent in substantially the form attached hereto. The Executive Director, and his designees, are further authorized to engage in negotiations with the Waukegan Port District for the Intergovernmental Agreement, in accordance with the terms of the Letter of Intent, and to undertake other due diligence activities as they deem reasonably necessary related to such negotiations, including without limitation causing to be prepared an appraisal of the fair market value of the Conveyance.

Section 3: Termination of Original LOI. The Original LOI is hereby terminated.

Section 4: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2021

AYES:

NAYS:

APPROVED this _____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

2 August 2021

Grant Farrell, Chairman of the Board
Skip Goss, General Manager
Waukegan National Airport
2601 Plane Rest Drive
Waukegan, Illinois 60087

Re: Letter of Intent

Dear Mr. Farrell and Mr. Goss,

I. Purpose.

The purpose of this Letter of Intent is to outline the terms and conditions of a proposed intergovernmental agreement (“IGA”) between the Waukegan Port District (“WPD”) and the Lake County Forest Preserve District (“LCFPD”), pursuant to which LCFPD would grant and convey to WPD certain property rights in land owned by LCFPD commonly known as the Waukegan Savanna Forest Preserve (the “Preserve”), so that WPD may install and operate a new, longer runway at Waukegan National Airport (the “Airport”).

The obligations in Section IV of this Letter of Intent (the “Current Obligations”) are binding on the parties, upon their execution of this Letter of Intent. Otherwise, the transaction contemplated by this Letter of Intent is subject to the negotiation, approval and execution of a mutually satisfactory IGA, which may include a separate purchase and sale agreement, restrictive covenants, and/or conservation easement. Until an IGA is approved and executed by both parties, neither party will have any legal duty or obligation to the other, other than the Current Obligations.

II. Background.

A. WPD is a unit of local government and special district created by the Waukegan Port District Act (70 ILCS 1865/1, et seq). WPD owns and operates the Airport, a full service public airport. The Airport currently operates two primary runways. One of these runways, designated Runway 5/23 (the “Runway”), is the subject of the proposed IGA.

WPD has advised LCFPD that a series of factors are converging that may negatively impact the long term viability of the Airport. The three main factors are:

- The Federal Aviation Administration (“FAA”) has determined that the existing Runway does not meet modern design and safety criteria. The FAA concurs that the proposed replacement Runway (described in this Section II.A below) would satisfy the current and forecasted purposes and needs of the airport and its users.
- The Runway is nearing the end of its usable life and will need to be replaced.

- The Illinois Department of Transportation, Region 1, District 1 Highways (“IDOT-Highways”) plans to widen Green Bay Road, adjacent to the Airport, which would shorten the Runway, unless an alternative design is adopted.

WPD proposes to (i) replace the existing 6,000-foot-long Runway with a new Runway that would meet all FAA safety requirements and (ii) integrate the new Runway into IDOT-Highway’s widening of Green Bay Road, which would, to accommodate the longer new Runway, pass under the new Runway (collectively, the “Project”). The FAA concurs that the proposed Runway be 7,000 feet in length (described in this Section II.A below) to satisfy the current and forecasted purposes and needs of the airport and its users.

WPD believes that the Project will help sustain the Airport’s long-term viability as a full-service public airport.

The Project will result in certain impacts to wetlands. Under federal, state, and County of Lake laws, WPD would be allowed to cause such impacts, only if it mitigates such impacts by creating new wetlands or enhancing other wetlands (“Wetland Mitigation”).

LCFPD represents that, in response to its inquiries to IDOT-Highways, IDOT-Highways has stated that it does not need to acquire any real property rights owned by LCFPD to complete the widening of Green Bay Road.

B. LCFPD is a unit of local government, created pursuant to the Downstate Forest Preserve District Act (70 ILCS 805/0.001, et seq). LCFPD has planned for the construction of a multi-use, recreational trail within the Preserve (the “Proposed Trail Segment”), that would be a segment of a multi-use regional recreational trail, that extends from Green Bay Road to Delany Road. The Proposed Trail Segment would be constructed of asphalt and would also include a tunnel under Yorkhouse Road (the “Proposed Tunnel”), pedestrian crosswalks, which may include related improvements such as traffic signal modifications, pedestrian push buttons and pavement striping (the “Proposed Crosswalks”), and two boardwalks (the “Proposed Boardwalks”). The Proposed Trail Segment, Proposed Tunnel, Proposed Crosswalks, and Proposed Boardwalks are generally depicted on Exhibit A.

LCFPD is authorized to convey fee simple interest in property owned by LCFPD to other units of federal, state, and local government, if the other unit of government makes a legislative finding that the LCFPD’s property is necessary for a public use.

To accommodate WPD’s Project, LCFPD is willing to convey fee simple interest in a portion of the Preserve to WPD.

III. Terms and Conditions of IGA:

The terms and conditions of the IGA will be as follows:

1. LCFPD will convey to WPD fee simple ownership of certain LCFPD property located north of Yorkhouse Road, containing approximately 53 acres, and generally depicted as the “LCFPD Land” on Exhibit A (the “Conveyance”).

2. The Conveyance would be subject to certain restrictive covenants, enforceable by LCFPD and in forms approved by FAA and Illinois Department of Transportation, Division of Aeronautics (“IDOT-Aero”), limiting WPD’s use of the LCFPD Land to public airport and transportation uses, and to no other use (the “Use Covenants”).
3. WPD will pay and provide the following consideration to LCFPD for the Conveyance:
 - a. An amount equal to the fair market value of the LCFPD Land. The fair market value will be based upon one or more MAI appraisals of the highest and best use of the LCFPD Land (the “MAI Appraisal”). The parties may agree that, in lieu of WPD paying some or all of the fair market value of the LCFPD Land, the LCFPD will accept other in lieu compensation such as fee simple ownership in other real property that is (i) suitable for LCFPD purposes and (ii) of comparable value, as determined by the LCFPD in its sole discretion. With respect to elements of the Conveyance, other than consideration, the Conveyance will be made in accordance with Federal Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," (Uniform Act), and FAA Order 5100.38D “Airport Improvement Handbook” (“Federal Conveyance Requirements”). LCFPD has represented to WPD that, when LCFPD acquires real property, it generally values the real property at its highest and best use, without regard to its future status as restricted open space, restricted conservation land, or other similar use. The parties acknowledge that an MAI Appraisal prepared in accordance with the Federal Conveyance Requirements may consider the highest and best use of the LCFPD Land to be restricted open space, restricted conservation land, or other similar use and, as a result, the fair market value of the LCFPD Land, as stated in the MAI Appraisal, may be less than the fair market value of the LCFPD Land, as viewed by LCFPD (such difference referred to herein as the “FMV Gap”).
 - b. Mutually agreed upon efforts to mitigate impacts to trees that include (i) consideration of the provisions of the LCFPD’s License and Easement Ordinance, for impacts resulting from the removing, cutting, or trimming of any trees (the “Removed Trees”) to accommodate the Project. and (ii) planting new trees in relation to trees that may be removed for the Project, which planting will occur in the immediate vicinity of such impacted area or, if planting in the immediate vicinity is not practical, in the surrounding community, including at Waukegan Savanna Forest Preserve, with an agreed period of time during which WPD would guarantee the trees (“WPD’s Tree Planting Obligations”). WPD will work with LCFPD in good faith to mitigate Removed Trees and to determine mutually agreed upon location for mitigated trees.
 - c. An amount, equal to (i) if LCFPD is able to secure a federal, state, or other grant that would fund the design and construction of the Proposed Trail Segment (including the Proposed Tunnel, Proposed Crosswalks, and Proposed Boardwalks) (a “Grant”), (A) LCFPD’s local share for the portion of the Grant used to design and construct the Proposed Trail Segment (including the Proposed Tunnel, Proposed Crosswalks, and Proposed Boardwalks) and (B) if the Grant is a CMAQ grant or other grant that does not reimburse for Phase 1 engineering costs, 100% of the Phase 1 engineering costs incurred and paid by LCFPD for the Proposed Trail Segment Project or (ii) if LCFPD is unable to secure a Grant, (A) 100% of the Phase 1 engineering costs incurred and paid

by LCFPD for the Proposed Trail Segment Project (“Phase 1 Costs”) and (B) 25% of the overall cost to LCFPD (minus the Phase 1 Costs) of designing and constructing the Proposed Trail Segment (including the Proposed Tunnel, Proposed Crosswalks, and Proposed Boardwalks). LCFPD will provide WPD with an estimated cost of the design and construction of the Proposed Trail Segment. WPD’s obligations with regard to either (i) or (ii) above shall not exceed \$2,300,000.00.

d. The parties will undertake additional cooperative efforts to determine whether WPD will be able to (i) provide LCFPD any land that the WPD elects to acquire for the purposes of Wetland Mitigation (“WPD-Acquired Mitigation Land”) or (ii) perform any required wetland mitigation on land owned or to be acquired by LCFPD (“LCFPD-Acquired Mitigation Land”). LCFPD shall have the option to accept any WPD-Acquired Mitigation Land, which the LCFPD may accept or refuse in its sole discretion. If mitigation is performed on WPD-Acquired Mitigation Land accepted by LCFPD or on LCFPD-Acquired Mitigation Land, then the design of any Wetland Mitigation on such land will be subject to LCFPD’s approval. WPD represents that that FAA requirements for wetland mitigation require that the Mitigation Land must be 10,000 feet or greater from the Airport. The parties acknowledge that WPD may desire to implement other options to achieve Wetland Mitigation other than on WPD-Acquired Mitigation Land or on LCFPD-Acquired Mitigation Land, including without limitation the purchase from a wetland mitigation bank of wetland mitigation credits. If WPD desires to purchase wetland mitigation credits, the parties will negotiate in good faith for the purchase of any such credits from any suitable existing or future wetland mitigation bank on land owned by LCFPD.

4. WPD will comply with Section 4(f) of the U.S. Department of Transportation Act, in addition to the requirements of Section 3.b above.
5. If (i) WPD does not commence construction of the Project within 5 years after the effective date of the IGA, (ii) WPD breaches the Use Covenants, or (iii) the LCFPD Land ever ceases to be used as an airport, then, at the LCFPD’s election and subject to FAA approval, any fee simple property rights conveyed to WPD by LCFPD will revert back to LCFPD. In the event of such a termination, LCFPD will not be required to refund or return any consideration to WPD.

IV. Current Obligations.

1. WPD will cause the MAI Appraisal to be completed and will deliver the completed MAI Appraisal to LCFPD. LCFPD will formulate its own proposed fair market value for the LCFPD Land. WPD and LCFPD will then negotiate in good faith for (i) a sales price for the LCFPD Land that is consistent with Federal Conveyance Requirements and (ii) if there is a FMV Gap (resulting from the negotiated sales price being less than LCFPD’s proposed fair market value), additional consideration to be paid or provided by WPD to compensate LCFPD for the FMV Gap. The parties intend to include such sales price and additional consideration (if any) in the IGA, rather than waiting to identify and negotiate such sales price and additional consideration following the execution of the IGA.

2. LCFPD will contact IDOT-Highways to seek IDOT-Highway's confirmation that it does not need to acquire any real property rights owned by LCFPD to complete the widening of Green Bay Road. If IDOT-Highways determines that it does need to acquire real property rights owned by LCFPD to complete the widening of Green Bay Road, then LCFPD will negotiate in good faith with IDOT-Highways for the price of such rights, based on LCFPD's view of the fair market value of such rights.
3. WPD will investigate (i) the extent of the wetland, tree, and other environmental, natural resource, and recreational impacts that will result from the Project ("Environmental Impacts"), (ii) the mitigation of Environmental Impacts that will be necessary, (iii) where such mitigation will be constructed, and (iv) the required acreage for any Mitigation Land (collectively, the "Environmental Investigation"). WPD will diligently pursue the Environmental Investigation during the term of this Letter of Intent and the parties will negotiate to include in the IGA appropriate and adequate mitigation for Environmental Impacts.
4. WPD will share with the LCFPD copies of or digital access to (i) any master plan(s) for the Airport, (ii) its plans and schedules for the Project, (iii) any studies, applications, reports, or similar documents submitted to the FAA, IDOT-Highway, IDOT-Aero, or any other regulatory agency with permitting or approval authority over the Project, and (iv) any response to any such study, application, report, or document.
5. As part of the Environmental Investigation, WPD will prepare an environmental assessment, as directed by the FAA, to review, study and define any environmental impacts and mitigation actions, for the construction of the Project (the "Environmental Assessment"). In conjunction with the Environmental Assessment, WPD will conduct a public hearing and a public open house to explain the Project, the Project schedule, and the need for the Conveyance. WPD anticipates that a draft Environmental Assessment will be complete in October of 2021 and that a final Environmental Assessment will be complete in January of 2022.
6. Each party will share with the other party, any written public comments that it receives concerning the Project, the Conveyance, or the IGA.
7. Either party may terminate this Letter of Intent, if it does not receive a draft Environmental Assessment on or before January 31, 2022. Within 30 days after receipt of the draft Environmental Assessment, WPD and LCFPD shall commence good faith negotiations towards an IGA and diligently pursue such negotiations for a period of not less than 150 days. If, within such 150-day period, the parties have not approved a mutually acceptable IGA, then either party, in its sole and absolute discretion, may terminate this Letter of Intent. Without limiting their discretion as stated in the previous sentence, but by way of providing examples of circumstances that might lead to termination, after such 150-day period, (i) WPD may terminate this Letter of Intent if it determines that, as a result of the Environmental Investigation, Environmental Impacts, or necessary mitigation, that the Project is not feasible and (ii) LCFPD may terminate this Letter of Intent if it determines that the Environmental Impacts are not acceptable or the proposed mitigation of Environmental Impacts is inadequate.

Sincerely,

Lake County Forest Preserve District

By: _____

Title: _____

Date: _____

Acknowledged and Agreed to:

Waukegan Port District

By: _____

Title: _____

Date: _____

Exhibit A

Lake County Forest Preserve District
 1899 W Winchester Rd
 Libertyville, IL 60048
 847-387-8840
 www.lcfpd.org

Prepared using information from Nearmap &
 Lake County Department of Information
 & Technology: GIS/Mapping Division
 18 North County Street
 Waukegan, Illinois 60085-4357
 847-377-2373

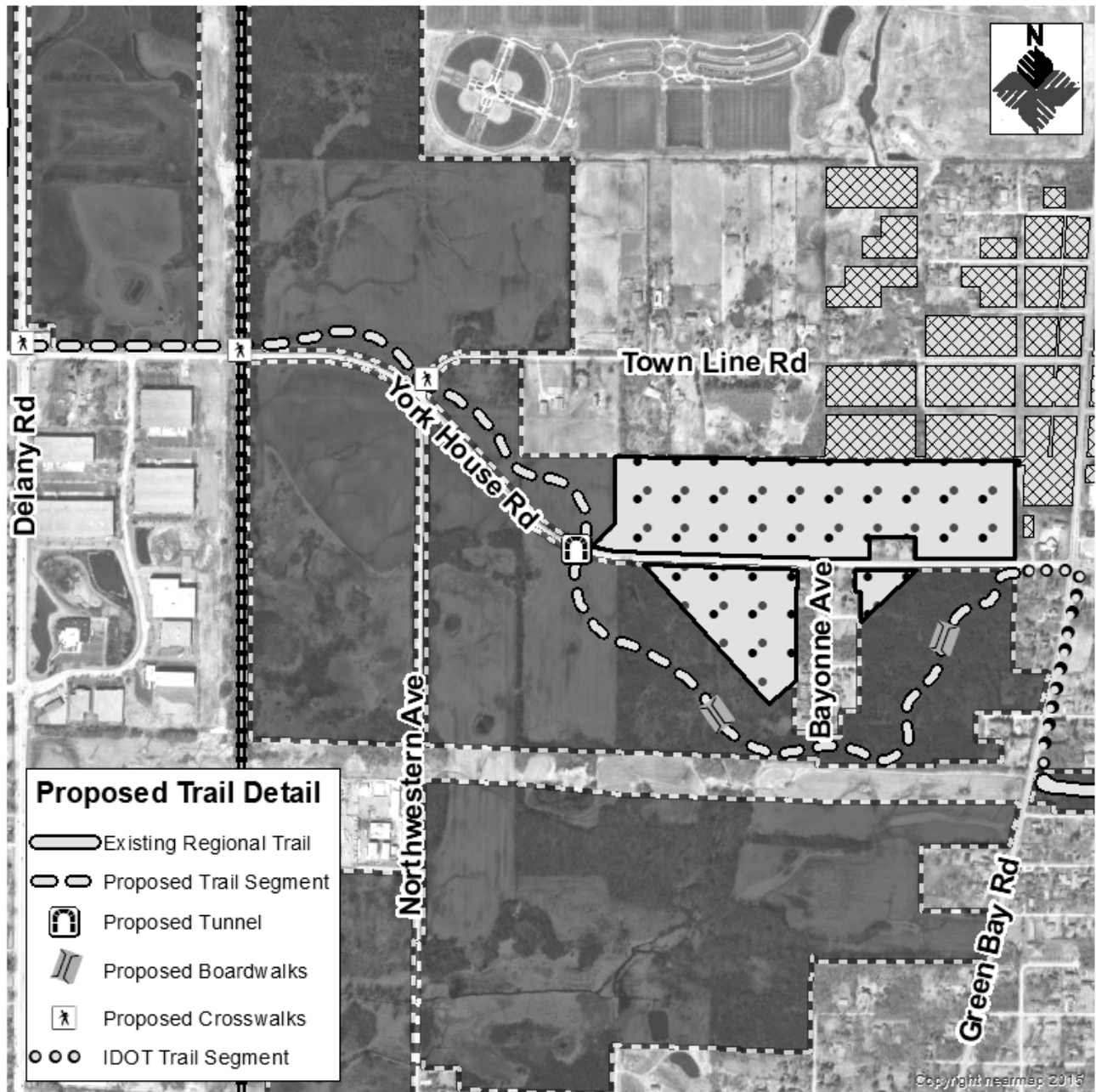
Courtesy Copy Only.
 Property boundaries indicated are provided
 for general location purposes. Wetland
 and flood limits shown are approximate and
 should not be used to determine setbacks
 for structure or as a basis for purchasing
 property.

2021 Aerial Photo Prepared 17 June 2021

Legend

-  Waukegan Savanna Forest Preserve
-  Port District Property
-  LCFPD Land: 52.3 Acres
-  Railroad

0 350 700 1,400 Feet



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