

Document Number

Document Title

Recording Area

Return: Department of Natural Resources
Bureau of Watershed Management – LF/6
P.O. Box 7921
Madison, Wisconsin 53707

Parcel Identification Number (PIN):

<p>State of Wisconsin Department of Natural Resources Box 7921 Madison, WI 53707</p>	<p>WETLAND IN-LIEU FEE COMPENSATORY MITIGATION CONSERVATION EASEMENT Sec. 281.36(8m), Wis. Stats (effective 12-21-2017)</p>
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THIS WETLAND IN-LIEU FEE COMPENSATORY MITIGATION CONSERVATION EASEMENT (hereinafter referred to as “Conservation EASEMENT”) is made by and between _____, (hereinafter referred to as the "Landowner "), and the State of Wisconsin Department of Natural Resources, (hereinafter referred to as "Department ").

RECITALS

WHEREAS, the Landowner is the owner in fee title of certain real property located in the Town of _____, _____ County in the State of Wisconsin, more particularly described on the Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Conservancy Area");

WHEREAS, the Landowner and the Department have identified certain conservation/aesthetic values, maintenance measures and restorative needs (hereinafter collectively referred to as the “Conservation Values”) in the Conservancy Area;

WHEREAS, these Conservation Values are documented in a Compensation Site Plan (hereinafter referred to as “Plan”) which includes baseline information, maintenance requirements and restorative measures which is marked as Exhibit B, attached hereto and made a part hereof which describes the Conservation Values at the time of this conveyance and is intended to serve as an objective standard for monitoring compliance with the terms of this Conservation Easement

WHEREAS, the Department and Landowner desire, intend and have the common purpose of conserving and preserving in perpetuity Conservation Values in the Conservancy Area in a relatively natural condition by placing

restrictions on the use of the Conservancy Area and by transferring from the Landowner to the Department, by the creation of this Conservation Easement on, over and across the Conservancy Area, and conferring affirmative rights including enforcement authority to ensure the preservation of the Conservation Values of the Conservancy Area and the terms and conditions contained in the Plan

WHEREAS, pursuant to sec. 281.36(8m), Wis. Stats., the Department has the authority to engage in compensatory wetland mitigation projects;

WHEREAS, the common law of the State of Wisconsin and the Uniform Conservation Act, sec. 700.40, Wis. Stats., provides for the creation and conveyance of conservation easements which impose restrictions or affirmative rights on lands for conservation purposes;

AND WHEREAS, the Department is eligible to be a qualified holder of a conservation easement pursuant to sec. 700.40, Wis. Stats., and is a qualified organization under Section 170(h) of the Internal Revenue Code of 1986;

NOW THEREFORE, for and in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Landowner does hereby give, grant, bargain and convey to the Department, its successors and assigns, a Conservation Easement in perpetuity in the Conservancy Area consisting of the following:

I. PURPOSE OF THE EASEMENT

The purpose of this Conservation Easement is to ensure that the maintenance measures and restorative needs in the Conservancy Area will be implemented and the Conservation Values will not be destroyed or substantially degraded by the Landowner and any subsequent owner of or holder of interest in the Conservancy Area .

II. RIGHTS AND REMEDIES OF THE DEPARTMENT.

1. The Department shall have the right to enforce by proceedings at law or in equity the terms and conditions of this Conservation Easement hereinafter set forth. The right shall include but not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Conservation Easement, to require the restoration or enhancement of this Conservancy Area, consistent with the Plan, titled, “ _____ ” and dated _____, and subsequent amendments thereto, if any, or to enjoin non-compliance by appropriate injunctive relief. The Department does not waive or forfeit the right to act as may be necessary to ensure compliance with terms of this Conservation Easement by any prior failure to act. Nothing herein shall be construed to entitle the Department to institute any enforcement action against the Landowner for any changes to the Conservancy Area due to causes beyond the Landowner’s control and without the Landowner’s fault or negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties). In the event the Landowner fails to timely and completely perform one or more of its duties and responsibilities in the Plan and such failure shall continue for thirty (30) days following receipt of written notice from the Department, then in addition to any other rights and remedies available in law or equity, the Department may enter the Conservancy Area and perform all acts required to remedy the breach. The Landowner shall be responsible for all the Department’s reasonable and necessary costs and expenses.
2. The Department, its contractors, agents and invitees, shall have the right to enter the Conservancy Area, in a reasonable manner and at reasonable times, for the purpose of inspecting the Conservancy Area to determine if the Grantors are complying with the terms and conditions of this Conservation Easement and the Plan, and further to observe, study, record and make scientific studies and educational observations.

3. The Department may install, operate, maintain, repair, remove and replace water control structures, consistent with the Plan, for the purpose of protecting, re-establishing and enhancing wetlands and their functional values. These rights include but are not limited to includes the right to transport construction materials to and from the site of any existing or proposed water control structure.
4. The Department shall have the right to establish or re-establish vegetation through seeding or plantings, consistent with the Plan.
5. The Department shall have the right to manipulate vegetation, topography and hydrology on the Conservancy Area consistent with the Plan, through diking, pumping, water management, excavating, burning, cutting, pesticide application and other suitable methods for the purpose of protecting and enhancing Conservation Values and complying with the terms of the Plan.

III. COVENANTS OF THE LANDOWNER

1. There shall be no commercial, agricultural or industrial activity undertaken or allowed within the Conservancy Area.
2. There shall be no buildings, dwellings, barns, roads, advertising signs, billboards or other structures in the Conservancy Area unless deemed consistent with the Plan and approved in writing by the U.S. Army Corps of Engineers (Corps).
3. There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals or other materials within the Conservancy Area except in conjunction with authorized management activities consistent with the Plan.
4. There shall be no dumping of trash, plant materials or compost, ashes, garbage or other unsightly or offensive material, especially including any hazardous or toxic waste, within the Conservancy Area.
5. The hydrology of the Conservancy Area shall not be altered in any way or by any means including pumping, draining, diking, impounding or diverting surface or ground water into or out of the Conservancy Area, unless consistent with the Plan.
6. All agricultural uses are prohibited within the Conservancy Area (e.g. plowing, tilling, haying, cultivating, planting or other agricultural activities). This does not include native seed production activities, mowing, planting, or herbicide use conducted for the purpose of enhancing the ecological functions and values of the Conservancy Area consistent with the Plan. The Landowner shall not stock animals or allow the grazing of animals on the Conservancy.
7. The Landowner is responsible for compliance with all federal, state and local laws governing the control of noxious weeds within the Conservancy Area.
8. There shall be no operation of motorized vehicles or equipment within the Conservancy Area except in conjunction with activities in conformance with Sections II and III herein.
9. The Landowner is responsible for long-term management activities of the Conservancy Area, as detailed in the Plan. These activities will be funded via the ILF Endowment Fund (the "Fund"), established by the Department and the Natural Resources Foundation. Under the terms of the Fund, monetary distributions from the Fund are made available to the Landowner to undertake the long-term management activities

described in the Plan. The Landowner agrees to annually collaborate with the Department in decisions about the specific long-term management activities for which distributions from the fund may be used. Failure to conduct long-term management activities in accordance with the Plan and in collaboration with the Department shall constitute a violation of this Conservation Easement.

10. The Landowner shall complete and submit an annual Long-Term Management Report describing the long-term management needs and activities conducted on the site for that calendar year. Failure to complete and submit an annual Long-Term Management Report shall constitute a violation of the Conservation Easement.
11. The Landowner shall not subdivide the Conservancy Area into smaller parcels through legal or de facto means. The Conservancy Area shall remain as a single, indivisible parcel managed in accordance with the Plan in order to protect the Conservation Values contained in the Conservancy Area.

IV. RESERVED RIGHTS

1. Nothing herein shall be construed as limiting the right of the Landowner's right to sell, give or otherwise convey the Conservancy Area provided that the conveyance is subject to the terms of this Conservation Easement.

V. GENERAL PROVISIONS

1. This Conservation Easement shall run with and burden the Conservancy Area in perpetuity and shall bind the Landowner and their heirs, successors and assigns. This Conservation Easement is fully valid and enforceable by any assignee of the Department, whether assigned in whole or in part. Prior to any assignment being effective, the Landowner must approve the assignment in writing.
2. The Landowner shall timely pay all real property taxes, charges and assessments levied by competent authority on the Conservancy Area.
3. The Landowner agrees that the terms, conditions, covenants and restrictions set forth in this Conservation Easement will be inserted in any subsequent conveyance of any interest of the Conservancy Area. The Landowner agrees to notify the Department of any such conveyance in writing and by certified mail no later than thirty (30) days before the conveyance.
4. The Department may assign or transfer this Conservation Easement and the rights contained herein to any Federal or state agency or private conservation organization for management and enforcement purposes.
5. As the Covenants of the Landowner (Covenants) contained in this Conservation Easement are also material terms of the WWCT In-Lieu Fee Program Instrument between the Department of the Army, U.S. Army Corps of Engineers (Corps) and the Landowner, the Corps shall also have the right to enforce the Covenants. This right of enforcement right shall include, but not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of these Covenants, to require the restoration of the Conservancy Area to its natural condition, or to enjoin any non-compliance with the Covenants against the Grantor and the Landowner's successors in interest. The Corps shall also have the right to enter the Conservancy Area, in a reasonable manner and at reasonable times, for the purpose of inspecting the Conservancy Area to determine compliance with the Covenants. The Landowner shall notify the Corps in writing and by certified mail no later than sixty (60) days prior to any proposed conveyance of the Conservancy Area (or any portion of it) or establishment of any other legal claims over the Conservancy Area. The enforcement of these Covenants by the Corps shall be governed by federal law.

- 6. The terms "Landowner" and "Department " as used herein may be singular or plural and shall be deemed to include, respectively, the Landowner and their heirs, successors, personal representatives, executors and assigns, and the Department and its successors and assigns.
- 7. This Easement may not be modified, amended or terminated except by execution and recording of a written instrument signed by the Landowner, the Department and the Corps.
- 8. If any provision or specific application of this Conservation Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Conservation Easement shall remain valid and binding.
- 9. This Conservation Easement shall be governed by and construed under the laws of the State of Wisconsin.

IN WITNESS THEREOF Landowner and Department have caused this Conservation Easement to be executed on their respective behalf effective this _____ day of _____, 20_____.

Landowner (SEAL)

Landowner (SEAL)

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this _____ day of _____, 20____, the above named _____
_____ to me known to be the persons who executed the foregoing
Conservation Easement and acknowledged the same.

*
Notary Public, State of Wisconsin
My commission (expires) (is) _____

ACCEPTED this _____ day of _____, 20__

State of Wisconsin
Department of Natural Resources
For the Secretary

_____(SEAL)
*

STATE OF WISCONSIN)
) ss
DANE COUNTY)

Personally appeared before me this _____ day of _____, 20__, the above named _____ to me known to be the person who executed the foregoing Conservation Easement and acknowledged the same.

*
Notary Public, State of Wisconsin
My commission (expires) (is) _____

CONSENT TO EASEMENT BY LIEN HOLDER

(name of person or institution)

being the owner and holder of a certain _____
(lien, mortgage, land contract, etc.)

which is _____
(insert recording data: doc.#, volume, page, etc.)

against the Conservation Area, does hereby join in and consent to said conveyance free of said lien.

IN WITNESS THEREOF, the hands and seals of any person joining in and consenting to this Conservation Easement on the day and year first written.

_____ (SEAL) _____ (SEAL)

STATE OF)
) ss.
_____ COUNTY)

Personally appeared before me this _____ day of _____, 20____, the above named _____ to me known to be the person(s) who executed the foregoing Conservation Easement and acknowledged the same.

*
Notary Public, State of Wisconsin
My commission (expires) (is) _____

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

EXHIBIT A
CONSERVANCY AREA LEGAL DESCRIPTION

EXHIBIT B
COMPENSATION SITE PLAN