

Wisconsin Agricultural Mitigation Bank Umbrella Instrument

Submitted to:

Wisconsin NRCS State Conservationist
United States Department of Agriculture
Natural Resources Conservation Service



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Definitions and Abbreviations

Agricultural Activity – Processes used to grow crops (planting, drain tile installation, ditch digging, etc.)

BSA – Bank Service Area

Credit Holder – Entity responsible for selling credits generated from mitigation sites. This can be any entity other than DNR

CRP – Conservation Reserve Program

CWA – Clean Water Act

DNR – Wisconsin Department of Natural Resources

NFSAM – National Food Security Act Manual

NRCS – Natural Resources Conservation Service

Participant – A person or organization who participates in United States Dept. of Agriculture programs

Program Sponsor – Wisconsin Department of Natural Resources, the entity administering the Wisconsin Agricultural Mitigation Banking Program in Wisconsin

Site Sponsor – Entity responsible for funding and implementing a mitigation site

SMP – Site Mitigation Plan

STC – Natural Resources Conservation Service State Conservationist

Third Party – Entity other than the DNR or NRCS

UMBI – Umbrella Mitigation Banking Instrument

USDA – United States Department of Agriculture

WAMB – Wisconsin Agricultural Mitigation Bank Program

Executive Summary

The Wisconsin Department of Natural Resources (DNR) is proposing the establishment of the Wisconsin Agricultural Mitigation Bank (WAMB). The WAMB will provide agricultural participants in Wisconsin with new wetland mitigation opportunities to address wetland conservation compliance responsibilities from the Food Security Act of 1985, as amended. The WAMB will serve the entire state of Wisconsin and will provide agricultural wetland mitigation credit opportunities through restoration of mitigation sites within defined service areas. This Umbrella Mitigation Banking Instrument (UMBI) has been prepared for review and authorization by the Wisconsin State Conservationist of the United States Department of Agriculture's Natural Resources Conservation Service (NRCS). This UMBI will serve as the legal agreement between the NRCS and DNR and will establish the technical, financial, and administrative components of the WAMB in accordance with state and federal laws. Upon signing this document, the parties will be bound to the principles and elements included herein.

WAMB Purpose

The purpose of the WAMB is to provide an additional wetland mitigation option for the participants of Wisconsin to stay in compliance with the Swampbuster provisions of the Food Security Act. Prior to the WAMB, participants could only mitigate for any wetland impacts on their own in order to stay in compliance with Swampbuster provisions. This often is complicated and cost prohibitive, and results in small scale wetland restorations that provide limited environmental gains. This new program provides credits that farmers can purchase to comply with Swampbuster provisions instead of completing the wetland mitigation themselves. The credit purchasing process is a straightforward and economical solution for NRCS wetland compliance, and results in larger scale wetland restorations that provide significantly higher environmental benefits to the state. Wetland mitigation completed by the WAMB must meet rigorous siting requirements and performance standards to ensure watershed health and no net loss of wetlands across the state.

The WAMB was created using a grant awarded to the DNR from the NRCS to create an agriculture mitigation banking program in Wisconsin. The DNR is well positioned to administer a mitigation program such as this, as it already coordinates Wisconsin's In-Lieu Fee wetland mitigation program. DNR will use this expertise in wetland restoration and mitigation to successfully implement the WAMB, which will benefit participants and wetlands across Wisconsin.

I. Program Overview

The WAMB will operate under the authority of the NRCS Wetland Mitigation Banking Program established by Section 1222(k) of the Food Security Act of 1985, as amended by [Section 2103 of the Agricultural Act of 2018 \(16 U.S.C § 3822\(k\)\)](#). The WAMB does not receive authorization from [Section 404 of the Clean Water Act \(CWA\)](#), or [s. 281.36 Wis. Stats.](#) and will not satisfy any mitigation responsibilities within these statutes. The WAMB will be established in accordance with the [National Food Security Act Manual, Fifth Edition Part 517 – Wetland Conservation Noncompliance and Eligibility \(NFSAM\)](#). The DNR will administer the WAMB and serve as the Program Sponsor. All mitigation projects encompassed in the WAMB will be administered by a site sponsor. A site sponsor may be any private,

governmental, or nonprofit entity, including the DNR. Credits available for sale will be sold by a Credit Holder, who will be an entity other than the DNR. The DNR will initially serve as a site sponsor and provide technical and financial assistance to mitigation sites. Once demand and sales have been established, DNR will reevaluate this method and may engage with third parties to become a site sponsor and fund mitigation sites on their own. Restoration actions undertaken by the site sponsor will comply with any applicable NRCS Conservation Practice Standards. The WAMB will provide mitigation credits to participants as appropriate in-kind compensation for wetland impacts resulting from agricultural activities. These wetland impacts must not require mitigation under CWA Section 404 or [s. 281.36 \(3n\) \(d\), Wis. Stats.](#) Credits generated from the WAMB will not satisfy the requirements for any discharges of dredged or fill material into wetlands that require mitigation under CWA Section 404 or s. 281.36 (3n) (d), Wis. Stats.

The WAMB program will initially fund program operations and mitigation site construction from NRCS grant funds. Restoration costs paid by grant funds will be tracked by mitigation site. These funds may only be used for approved activities described in the NRCS Grant Agreement. WAMB revenue will be tracked to ensure program solvency and transparency.

A. Goals and Objectives

The primary goal of the WAMB is to mitigate for wetland impacts subject to the conservation provisions of the Food Security Act of 1985, as amended. The WAMB, via its mitigation sites, will restore wetland acres and functions to offset wetland impacts on agricultural lands and support the broad national goal of no-net-loss of wetlands. Mitigation sites will be designed to restore historic hydrology, promote robust, native wetland plant communities, and provide valuable wetland wildlife habitat. Individual mitigation sites will be added to Appendix G of the UMBI as suitable sites are approved.

Specific objectives that will lead to WAMB success include the restoration and maintenance of hydrologic processes, and the restoration and maintenance of wetland vegetation communities. These objectives have measurable standards which will be defined in each Site Mitigation Plan (SMP). The standards will be evaluated to determine the success of each mitigation site included in the WAMB.

Future goals of the WAMB include the establishment of additional mitigation sites in high-demand service areas, advertising the program to ensure participation, and program refinement and improvement.

B. Agency Roles and Responsibilities

The DNR, through this UMBI, as approved by the NRCS, will be responsible for WAMB program creation, administration, and oversight. DNR will oversee the development, protection, monitoring, and maintenance of all mitigation sites included in the WAMB. DNR will assist site sponsors (if not the DNR) with site identification and evaluation, development of SMPs, regulatory permitting, project implementation, annual monitoring, and long-term management of the sites in consultation with the NRCS.

The DNR will be the site sponsor for initial WAMB mitigation projects. In this capacity, the DNR will oversee all aspects of site implementation, fund the project, identify a Credit Holder, and facilitate the sale of mitigation credits to participants. If a third party desires to be a site sponsor, the DNR will provide technical assistance to the site sponsor and ensure that they are complying with all aspects of

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the WAMB identified in this UMBI. This third party may be responsible for some, or all, of project implementation and management, in addition to selling credits. The DNR will approve all withdrawals of credits associated with a mitigation site regardless of site sponsorship. Additionally, the DNR will complete and submit an annual report of the WAMB to the NRCS for evaluation of program status and compliance with the UMBI and WAMB program goals by December 31st of each calendar year.

The NRCS Assistant State Conservationist of Compliance will provide oversight for the WAMB and guidance and approvals necessary for all program administration including UMBI approval and amendments, Conservation Easement approvals, and SMP review and approval.

The NRCS will solely determine the number of credits a participant would need to purchase to offset their wetland impacts. NRCS staff will verify or issue certified wetland determinations, upon request, for mitigation sites associated with the WAMB in accordance with the NRCS's statutory authority. Finally, when applicable, the NRCS will inform participants of the WAMB as an option for meeting conservation compliance responsibilities and connect the participant with the DNR to begin the credit purchase process.

C. Service Areas

The WAMB will serve the entire state of Wisconsin. Credits generated from each mitigation site will be available for purchase in the same bank service area (BSA) corresponding with that site. The WAMB will include two tiers of BSA's defined by watershed boundaries. The primary BSA's in Wisconsin is defined using the twelve 6-digit hydrologic unit code (HUC-6) watershed boundaries. Secondary BSA's will be defined by the three 4-digit hydrologic unit code (HUC-4) Basins. When a wetland impact occurs, the WAMB will utilize the primary BSA's first to determine which mitigation sites can be used to mitigate for that impact. If credits are not available in the wetland impact's primary BSA, participants may purchase credits from mitigation sites within their secondary BSA to mitigate for their impact. These BSA's will be utilized to track and report credit sales and associated mitigation activities. Figure 1 below depicts a map of these BSAs.

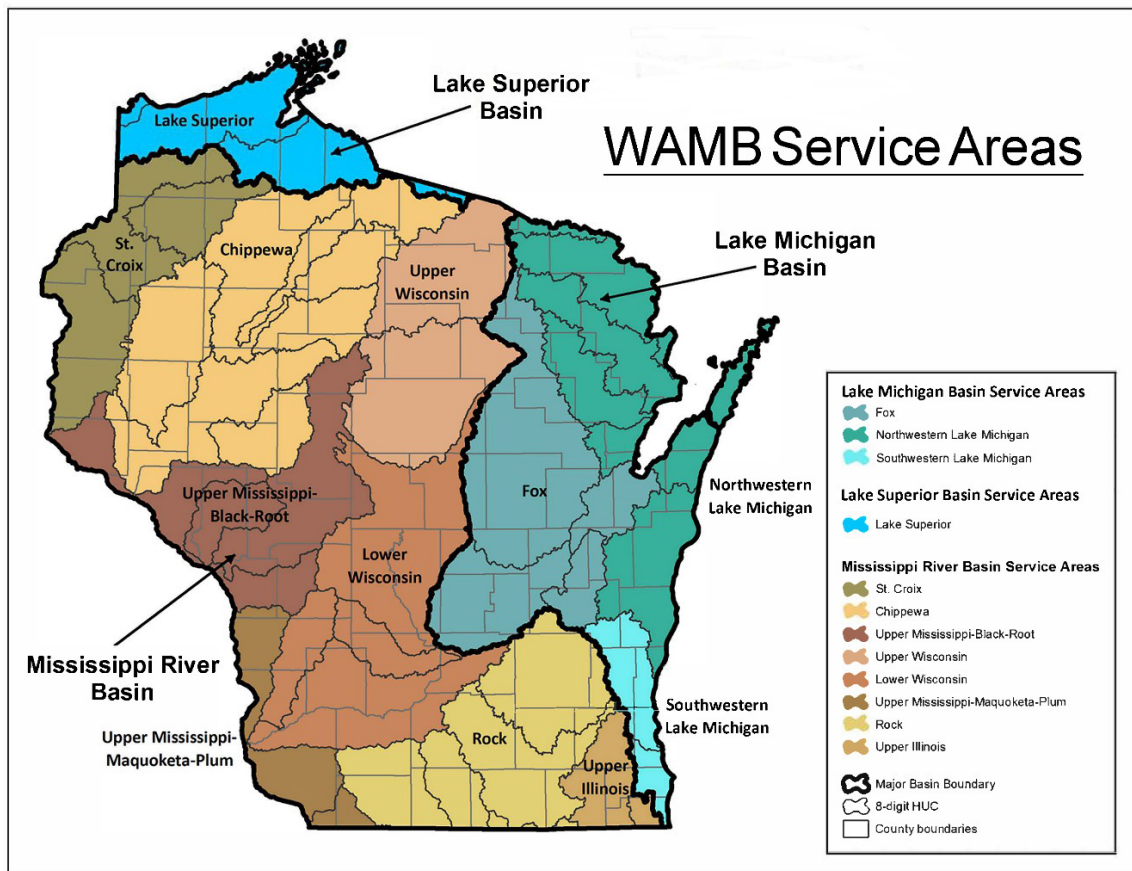


Figure 1. A map of BSA boundaries in Wisconsin.

II. Credits

Credits play a critical role in the success of agricultural wetland mitigation banking. They provide a means to quantify wetland impacts and ensure that wetland impacts have been adequately mitigated for the purpose of compliance with the Food Security Act.

A. Use of Mitigation Credits by Participants

The BSA is the designated area in which a mitigation site can be expected to provide appropriate mitigation for agricultural activities that impact wetlands. Typically, mitigation credits must be purchased from the same BSA (primary or secondary) where the wetland impact occurred in order to meet conservation compliance requirements. On a case-by-case basis, the NRCS State Conservationist (STC) may allow a participant to purchase credits from an adjacent BSA to fulfill their mitigation requirements. The NRCS will determine the number of credits necessary to properly mitigate for a wetland impact. Participants must purchase a minimum of one credit for each acre of wetland impacted. NRCS staff may elect to raise this ratio based on the adopted Wisconsin Mitigation Functional Assessment Model (FAM).

Available credits from a mitigation site may only be used by agricultural participants to satisfy NRCS wetland conservation compliance responsibilities. When approved by NRCS and DNR, credits generated by the WAMB can be purchased by participants to mitigate impacts to wetlands subject to the conservation provisions of the Food Security Act of 1985, as amended. WAMB credits cannot be used to satisfy the mitigation requirements of CWA Section 404 or s. 281.36 (3n) (d), Wis. Stats., because the WAMB operates independently and separately from these state and federal authorities. Wetland impacts resulting from an agricultural activity could be regulated under the Food Security Act, CWA, Wisconsin Statute, or all three. It is the responsibility of the participant to ensure that they are complying with all applicable state and federal statutes and regulations before they propose to utilize credits from the WAMB. Additionally, DNR staff will review each credit request to confirm that the use of the credits from the WAMB is appropriate.

A participant may not sell or transfer credits to another entity or use the credits to mitigate for a wetland impact not already approved. All credit sales from the WAMB are final. Potential refunds to participants for credit purchases will be evaluated on a case-by-case basis and will need to be approved by the STC, the Credit Holder and DNR.

B. Credit Holders

The DNR will not sell credits generated from WAMB mitigation sites. The DNR will partner with third parties who will operate as a Credit Holder for mitigation sites and will sell WAMB credits. Credit holders could be the landowner of the mitigation site or another entity. Regardless, the DNR will facilitate each credit sale to ensure efficiency. Typically, credit holders will be responsible for the long term management responsibilities on the mitigation sites for which they sell credits. This will be described in each Site Mitigation Plan (SMP).

C. Credit Purchasing Process

A typical process for a credit sale is outlined below:

1. A participant identifies an agricultural activity that impacts a wetland and decides they want to mitigate for that impact. The participant checks with the DNR and the U.S. Army Corps of Engineers to ensure the impact does not require mitigation under the CWA or s. 281.36 (3n) (d) Wis. Stats.
2. The participant contacts the NRCS, who will work with them to determine if they need to get a certified wetland determination. The NRCS will inform the participant of their compliance options, one of which is purchasing credits from the WAMB.

3. If the participant wishes to utilize WAMB mitigation credits, the NRCS utilizes the FAM consistent with USDA NRCS National Wetland Functional Assessment and Mitigation Procedures, which determines the credits needed to mitigate for the proposed activity or impacted wetland. NRCS provides the participant with DNR contact information to purchase credits.
4. Participant completes the DNR credit application and includes their certified wetland determination and NRCS approved functional assessment.
5. DNR reviews the application and, if accepted, provides the participant with a list of eligible Credit Holders to purchase credits from. If it is not accepted, the DNR will inform the participant and NRCS.
6. Participant contacts an eligible Credit Holder to inquire about the potential sale. If an acceptable sale price can be determined, the Credit Holder sends an invoice to the participant for payment.
7. Once payment is complete, the Credit Holder issues the approved affidavit (Appendix E) confirming purchase and sends to the participant, NRCS, and DNR.
8. NRCS provides an updated CPA-NRCS-026-WC, Certified Map, and Letter to Participant.

D. Credit Determinations on Mitigation Sites

Credit allocation to mitigation sites will be proportionate to the wetland functional gains associated with different management activities completed on site. The following actions will be used to generate credits for the WAMB.

- **Restoration of effectively drained or filled wetland areas.** Restoration of both the natural hydrology regime and native, non-invasive vegetation on historic wetlands that have been effectively drained or filled are eligible for reestablishment credits in an amount up to a ratio of 1:1 (1 credit generated for 1 acre of restoration).
- **Creation of wetland areas:** Creation of wetlands in areas determined by NRCS to be non-wetland are eligible for creation credits up to a ratio of 1:1. Hydrology inputs to these areas must be from natural means. Hydrology supplied to these areas via drain tile will not be eligible.
- **Protection of previously restored wetlands under threat of destruction.** In accordance with [NFSAM 517.22B\(1\)\(ii\)](#), wetlands that were cropped and then restored under the Conservation Reserve Program (CRP) or other non-permanent restoration program may be eligible for enhancement credits when NRCS determines, based on information provided by the site sponsor, that a demonstrable threat exists that will lead to destruction of the previously restored wetland. The CRP or similar contract must be terminated prior to acceptance to the WAMB. Wetlands under this action are eligible for enhancement credits at a ratio of up to 1:1.
- **Upland Buffer Areas:** Upland buffer areas may be included on mitigation sites to provide ecological benefit and lifts in function to the adjacent wetland. However, as these areas do not provide increases in wetland acreages, these areas will not generate wetland mitigation credits.
- **Deep water habitats:** Restored areas that would be considered a deep water habitat do not fit the NRCS criteria of a wetland and these areas are not eligible for credit generation.

The total amount of credits generated by the above actions will result from a site-specific determination approved by the NRCS during the review of each individual mitigation site and will be included in the SMP. All credits generated by mitigation sites as part of the WAMB will be represented in the mitigation site account ledger as wetland credits. Due to the nature of determining credits generated using the

methods above, a site added to the WAMB will generate a maximum 1 credit per 1 acre of restoration and thus will comply with [NFSAM 517.23 E \(ii\)](#), which requires a no net loss of wetland acres due to agricultural activities.

E. Credit Release Schedule

The credits generated from WAMB mitigation sites will be released by NRCS as project milestones and standards are achieved. Credits may be sold to participants only after credits they have been released by the NRCS to the Credit Holder. Table 1 is a typical credit release schedule that mitigation sites may follow. If necessary, this standard release schedule may be adjusted after consultation between the DNR and the NRCS and will be defined in the SMP. If the monitoring period performance standards are not met by the end of the period, final credit releases may be delayed or reduced to an amount determined by the NRCS in consultation with the DNR. Land restored under CRP or similar federal programs under demonstrable threat will have a single, complete credit release once the current contract has been terminated, a conservation easement has been recorded on the site, and the site has met the typical hydrology and vegetation standards.

Project Milestones	Credit Release Percentage
As-Built Approval	20%
Hydrology Standard	20%
Interim Vegetation Standard	30%
Final Vegetation Standard	30%

Table 1. Standard Credit Release Schedule

F. Establishment of Credit Prices

Credit prices will be set by the Credit Holder. The DNR requests that Credit Holders set prices in a manner that is fair and accessible for Wisconsin participants. A potential objective method for credit price establishment aims to recoup the total costs of planning, construction, maintenance, monitoring, long term maintenance and administration of the project. A portion of the funds generated from credit sales should also be used by the Credit Holder to support long-term management activities on the mitigation site. Major costs that should be taken into consideration when setting credit prices are as follows:

- Preconstruction: SMP Drafting, design/feasibility studies
- Construction: earthwork, engineering, seeding
- Maintenance and Monitoring: invasive species control, hydrology, and vegetation monitoring
- Administration: program management, selling credits, title review, title insurance, conservation easement drafting and recording
- Long-Term Management: invasive species control (after the monitoring period), easement compliance inspections

The DNR may request that the Credit Holder evaluates credit prices each year and adjust prices for inflation, market demand or other factors. The DNR will provide information on the DNR website to the public about credit prices.

G. Credit Accounting and Tracking

The DNR will maintain electronic ledgers to track all credit transactions by mitigation site, service area, and program. The ledgers will track all released, potential, and sold credits from each site. The Credit Holder will report each credit sale, via an affidavit, to the NRCS WI Assistant State Conservationist-Compliance within 30 days of each completed credit sale. An annual report detailing all authorized credit transactions will be submitted to the STC by December 31st of each year. A model electronic ledger depicting this is shown in Appendix F.

III. Mitigation Site Overview

The WAMB will include individual mitigation sites consisting of restored wetlands or created wetlands verified by the NRCS. Mitigation sites will be added to the WAMB via amendments to Appendix G of the UMBI after NRCS approval of SMPs and the recording of conservation easements. WAMB mitigation sites will be selected by qualified wetland experts after reviewing and scoring of eligible applications. These applications will provide details on wetland restoration potential, hydrologic fit within the landscape, ecological sustainability, watershed-scale wetland mitigation needs, cost, and administrative factors. Only projects scoring above a set, objective threshold will be selected as mitigation sites. The DNR reserves the right to deny the approval of a mitigation site to the WAMB for any reason prior to SMP submission to the NRCS. An NRCS certified wetland determination will be performed on each mitigation site to determine the extent of wetland acreages.

A. Site Evaluation

Mitigation sites will be identified, reviewed, and selected using the criteria below. These criteria will be documented in each mitigation site's SMP.

1. Landscape Considerations

The DNR will evaluate adjacent land use practices and watershed features of each potential site through Geographic Information System platforms in addition to historical aerial photographs. Analysis will include watershed characteristics such as proximity to other conservation lands, as well as high priority watersheds for conservation and habitat protection. Surrounding lands will be evaluated for potential for offsite impacts such as flooding. Projects may not be selected if these offsite impacts cannot be adequately addressed. Compatibility will also be assessed by evaluating the site in relation to any applicable watershed management plans.

2. Site Compatibility

The DNR will evaluate the characteristics of each site, which will provide a means of predicting project success as well as provide a foundation for the development of restoration and enhancement activities. Data collected will include topography, hydrology, soils, vegetation, and protected species. A summary of this data will be included in individually approved SMPs.

3. Topography

This data will include a study of current topography as recorded by the United States Geological Survey (USGS) quadrangle map. Additionally, aerially derived light detection and ranging (LiDAR) data or on-the-ground survey work may be used to provide additional topographic information.

4. Hydrology

Analysis of current site hydrology will include a study of inputs and outputs as well as any hydrologic manipulations such as drain tile, surface drains, impoundments, or other hydrologic infrastructure.

5. Soils

The USDA-NRCS Web Soil Survey will be consulted for each site. A description of the types of soils, acreages and hydric rating will be reported in the SMP.

6. Financial and Administrative Considerations

Restoration, maintenance, and monitoring costs will be evaluated to ensure the financial viability of each site. Real estate components such as ownership, title, and property rights will also be evaluated to determine site viability. Deed restrictions could make a site ineligible for the program if the restriction could jeopardize the functional gains or long-term viability of the wetland restoration.

7. Threatened and Endangered Species

SMPs will include documentation of any state or federally listed plant and animal species known to occur in the site's vicinity. SMP's will also address any [National Environmental Policy Act](#) and [s. 29.604, Wis. Stats.](#), requirements. Relevant information will be obtained from the U.S. Fish and Wildlife Service (USFWS) as well as the DNR.

8. Historic Properties and Cultural Resources

Sites will be reviewed based on requirements under Section 106 [National Historic Preservation Act](#) and [s. 44.40, Wis. Stats.](#), to determine their potential for archaeological sites located on the property. If it is determined that archaeological sites could be present, actions will be implemented into the SMP to avoid or minimize impacts to these sites, in accordance with state or federal law. These findings may make the site ineligible for the program. These reviews may be performed by a DNR state archaeologist or an NRCS archaeologist.

B. Mitigation Site Permits

All projects must have the proper permitting in place prior to site construction. The site sponsor is responsible for ensuring all the proper permits have been obtained and should coordinate with landowners. They may consult with the DNR for assistance in these matters. Commonly required permits are:

- DNR Wetland Restoration General Permit
- DNR Stormwater Notice of Intent
- Army Corps of Engineers Nationwide Permit 27

C. Mitigation Site Approval

After WAMB UMBI approval, individual mitigation sites will be added as an amendment to Appendix G of the UMBI through the approval of an SMP by the NRCS. Prospective landowners interested in having a mitigation site on their property will first complete a project application and submit to the DNR for review. If selected, the DNR will then share the project application and site with the NRCS. NRCS will serve as the ultimate approval of all sites. Any potential DNR owned sites will be evaluated using the

same criteria as other potential external site applications. The process below will be used for the selection and inclusion of a new site within WAMB:

1. Landowner obtains a certified wetland determination of the proposed site, then completes and submits a site application with the certified wetland determination to the DNR.
2. DNR receives and scores site applications and selects high-scoring applications.
3. If the landowner assumes the role of site sponsor, they will work with DNR to develop an SMP for the site. DNR will review the landowners draft SMP. After review and coordinating a final draft with the landowner, the DNR will submit this draft SMP to the NRCS for review and approval. If DNR is the site sponsor, the DNR will develop the SMP and submit the SMP to the NRCS for approval.
4. The NRCS STC provides a letter of approval to the DNR accepting the SMP. This constitutes approval for the addition of the mitigation site to Appendix G and the WAMB program.

D. Mitigation Site Protection

A conservation easement, or similar legally defensible land protection document, will be established and recorded over all sites included in the WAMB to provide protection to the restored site in perpetuity. A conservation easement must be recorded before any credits will be released for sale. Conservation easements will be held by the DNR, or other eligible entities as approved by the NRCS Office of General Counsel. The easement holder will be responsible for long term easement compliance monitoring and enforcement. Copies of all conservation easements acquired will be provided to the NRCS. These easements will be held over the land in perpetuity to protect the wetland restoration and ensure a participant is not later found to be out of compliance due to the conversion or degradation of wetlands on the mitigation site. A template easement for use on WAMB mitigation sites is included in Appendix H.

E. Site Mitigation Plan

Before construction begins, or easements are recorded on-site, a completed SMP will be submitted by the DNR to the NRCS for review. External site sponsors developing SMPs must be approved by the DNR before their SMP will be submitted to the NRCS. The NRCS will have 60 days to review the SMP and provide any comments. After NRCS approval, the SMP is considered complete, and easement recording, and construction may then begin as described in the SMP. Appendix A outlines what content will be required for SMP submittals.

F. As-built Report

An as-built report must be submitted to the NRCS within 90 days after construction has been completed. This report ensures that earthwork, construction activities, and seeding were completed consistent with the SMP and NRCS standards and specification. This report will be reviewed by NRCS staff with proper engineering job approval authority. Any deviation from the SMP will be noted in the as-built report and adjustments to credit generation may be made due to the deviation. The as-built report must be approved by the State Conservation Engineer. If the State Conservation Engineer cannot accept the report, remediations to the SMP or on-site construction will be performed to reach a solution that is approvable. Appendix B outlines what content will be required in as-built submittals.

G. Performance Standards

Site specific performance standards will be developed for each mitigation site and will be documented in the SMP. Performance standards will be clear, measurable, and detailed enough to be able to evaluate

site progress and success. Standards will be robust enough that, once achieved, minimize the need for management activities after the monitoring period. Performance standards will include hydrology and vegetation standards.

Hydrology performance standards will be tailored to achieve historic wetland conditions that occurred on-site before manipulation occurred. At a minimum, wetland areas on-site will meet NRCS wetland hydrology criteria and will be focused on restoring historic conditions. Any created wetland areas must meet NRCS wetland hydrology criteria in order to meet hydrology performance standards.

Vegetative performance standards will be developed in conjunction with the hydrology and native communities expected to succeed at each site. These standards may address the absolute cover of bare ground or open water, the relative cover of native non-invasive species, the relative cover by non-native invasive species, percent relative cover by hydrophytes, or plant species richness.

Performance standards will be similar for previously restored sites under demonstrable threat. Goal hydrology may already be achieved and will only need to be verified to consider hydrology standards met. However, further vegetation restoration activities may need to be developed to achieve the same performance standards as traditional mitigation sites.

H. Monitoring and Reporting

Each WAMB site will have a specific monitoring plan developed as part of the SMP. A monitoring plan will measure the success of restoration activities relative to the goals and performance standards established in the SMP. Monitoring will be focused mainly on hydrology and vegetative performance at the site. The SMP will address all monitoring requirements including the parameters to be monitored, the methods used, expected timing of site inspections, and the party responsible for conducting the monitoring. Monitoring will commence no later than one growing season after initial construction. A typical monitoring period will be five years. The NRCS and DNR may decide to end the monitoring period early if both parties agree that final performance standards have been met and are sustainable. All annual monitoring reports will be submitted by December 31st of the monitoring report year. See Appendix C for an outline of a standard monitoring report.

I. Long-Term Management

The goal of long-term management is to ensure that each mitigation site is maintained in good condition and continues to support the specific goals of the project in perpetuity. After performance standards have been achieved, long term management will begin. Sites will be inspected annually to proactively identify site management problems such as erosion, sedimentation, infrastructure failure, invasive species establishment, unauthorized access, encroachment, or other issues. Long-term management on the mitigation site will typically be funded using credit sale revenue.

Funding for long-term management will be detailed in the SMP. The DNR recommends that the Credit Holder set aside a portion of this funding via an endowment, trust, or other means to ensure it will be available into the future.

The long-term management of each mitigation site will be the responsibility of the Credit Holder. The Credit Holder may elect to identify another entity to complete long-term management activities. This will be described in the SMP. Each site will require unique maintenance to protect the wetland

resources present. Any anticipated maintenance, management, or inspections will be identified in a long-term management plan included in each SMP.

J. Financial Assurances

Multiple mechanisms will be set in place to assure the success and sustainability of WAMB mitigation sites. These mechanisms will reduce the risk of mitigation site failure and eliminate the need for site sponsors to provide financial assurances in some cases. Further, the WAMB requires that all site sponsors identify and obtain sufficient funds for a project prior to development and construction. Specific mechanisms include:

- **Credit Release Schedule:** Initial credit releases will not occur until after NRCS engineering job approval sign-off of the as-built report for each site. All further credit releases will not occur until after performance standards are met. This ensures that participants purchasing credits are mitigating for wetland acreages already restored on mitigation sites.
- **State Authority:** In the event the WAMB program dissolves, the DNR will coordinate with the NRCS to identify a new authority for WAMB sites and SMPs, including control of any transferrable endowments, trusts, and other funding sources dedicated to WAMB.
- **Third party site sponsors:** Third party site sponsors funding their own mitigation projects will need to provide financial assurances to the NRCS to have their mitigation site accepted by the WAMB. Specific mechanisms must be approved by the NRCS STC before the project commences.

K. Force Majeure and Delays

All WAMB sites will be vulnerable to unavoidable occurrences such as wildfires, climatic instability, vegetative depredation by wildlife, disease, adverse flooding, or gross vandalism of sites. The occurrence of such an event may necessitate changes to the sites, including SMP revision, performance standard modification or other management objectives to counteract any negative environmental impacts. The primary goal in the event of such occurrences will be to remedy any issues, provided funding is available and the remedies are feasible. Circumstantially, it may be decided to allow nature to take its course, particularly if impacts are expected to be only temporary. In the event of any unavoidable occurrences, the DNR and the NRCS shall determine changes that will be in the best interest of the site. Any change to the site deemed necessary due to these occurrences will be specified in an SMP amendment and submitted to the NRCS. An approval from the NRCS STC is required before such changes can be implemented.

L. Mitigation Site Closure Procedure

Once the final credits from a mitigation site are sold, the DNR will provide certification to the NRCS stating that all credits from the mitigation site have been utilized and the mitigation site will be closed for all future uses. Any remaining project funds will be used for other WAMB program functions.

If it is determined that the performance criteria of the mitigation site are unattainable, the site sponsor may propose to close a mitigation site early and forfeit all credits remaining to be released. If the site sponsor proposes to close the mitigation site early, they will provide the NRCS with notice and allow 90 days for review of the proposal. The NRCS must approve any bank closures. Long-term management responsibilities may still be required.

The site sponsor will provide the following in their certification of mitigation site closure:

- Accurate accounting of mitigation site credits on the credit ledger, which must be consistent with NRCS accounting.
- A long-term management plan of the site, as approved by NRCS as well as the party responsible for long term management.
- A map of the closed mitigation site including total acreage, successfully mitigated acreage, and total credits mitigated for.

IV. Program Administration

A. WAMB Advertising

To ensure that participants across Wisconsin are aware of the WAMB program, the DNR will develop a far-reaching advertising plan for the WAMB which will include:

- Attending NRCS sponsored workshops and meetings.
- Meeting with participant-focused groups, such as local Farm Service Agency offices, to explain the program and distributing advertising materials (brochures).
- Creating a webpage for the WAMB on the DNR website.
- Developing an online marketing campaign that may include press releases, news releases, and social media posts.

In concurrence with DNR promotion and after the UMBI is approved, the Wisconsin NRCS State Public Affairs Specialist may also elect to conduct outreach to promote the WAMB.

B. Instrument Amendments

This UMBI may be amended only by the written agreement between the DNR and the NRCS. It is understood by both parties that this UMBI will be regularly amended to add additional mitigation sites as SMPs are approved. Once an SMP has been approved using the above outlined process, the DNR will append the site to Appendix G of this Instrument. An updated Appendix G will be provided to the NRCS upon request.

Alternatively, modifications to the content of this UMBI may be proposed by either the DNR or the NRCS. Either party, when proposing an amendment, will provide written notice to the other party outlining the requested change, as well as the reasoning for the amendment. The receiving party reserves 30 days to reply with an approval or denial of the request. If the amendment is denied, the dissenting party will provide reasoning for the denial, in addition to modifications that could result in amendment approval. Once an amendment is approved, the DNR will make the agreed changes and provide an updated UMBI to the NRCS.

C. Instrument Termination

The DNR or the NRCS may choose to terminate this Instrument following a 90-day written notice to the other party. Following either parties' intent to terminate, the following provisions will occur:

- No new credits may be generated for the WAMB. Current available credits may continue to be sold provided that the Credit Holder contacts the NRCS and agrees upon a modified credit sale process that no longer includes the DNR.

- Within 90 days, the DNR will submit to the NRCS the following:
 - A report of all mitigation projects previously approved by the NRCS including the number of credits generated, credits left to be released and credits sold. This report will include the extent to which each site is achieving performance standards.
 - A plan for ensuring that the functions provided by current mitigation sites will be maintained or replaced. Such measures may include continued maintenance in accordance with the conservation easement, completion of the pre-approved mitigation project and associated monitoring, or the provisions of alternative mitigation.
- The NRCS will determine if the above measures submitted to the NRCS are sufficient and will approve final closure of the WAMB.
- The conservation easement recorded on any mitigation site will remain in effect in perpetuity unless alternative mitigation acceptable to the NRCS has been provided and an amendment of the easement is agreed to in writing by the NRCS. If no credits have been sold from an approved mitigation site, the conservation easement may be terminated with written approval from the NRCS.
- Any other funds held by the DNR for the purposes of WAMB agricultural mitigation will remain with the DNR to be used for any other agricultural mitigation obligations such as long-term management.

D. Legal Conditions

This UMBI shall be governed by and construed in accordance with the laws of Wisconsin and the United States as appropriate.

In the instance of disagreement between the DNR and the NRCS, the NRCS will make the final decision after considering all options.

In the event any one or more of the provisions contained in this UMBI are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this UMBI shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

The DNR is responsible for the implementation, maintenance, and any required remediation of all mitigation sites, even though those activities may be conducted by other parties through requests for proposals or other contracting mechanisms.

NRCS approval of this UMBI constitutes the regulatory approval necessary for the Wisconsin Agricultural Mitigation Bank to provide mitigation opportunities to Wisconsin participants pursuant to 16 U.S.C § 3822(k). This UMBI is not a contract between the DNR and the NRCS or any other agency of the federal government. Any dispute arising under this UMBI will not give rise to any claim by the DNR for monetary damages. This provision is controlling notwithstanding any other provision or statement in the UMBI to the contrary.

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November 2024

Signatures

These signatures represent the final approval of this UMBI and authorization of the WAMB.

The undersigned certify that they are fully authorized by the party that they represent to enter into this agreement and to legally bind that party to this agreement.

Signed by: 
7A5DFF3497144B5

Deputy Secretary

Wisconsin Department of Natural Resources
11/18/2024 | 10:44 AM CST

Date of Signature

**NATHAN
FIKKERT**

Digitally signed by NATHAN
FIKKERT
Date: 2024.12.17 09:34:01
-06'00'

Wisconsin State Conservationist

Natural Resources Conservation Service

Date of Signature

Appendix A – Site Mitigation Plan Outline

(Additional or different information may be required prior to approval on a project-by-project basis)

- I. Executive Summary:** ONE PAGE summary of the proposed site plan containing the following information:
 - Site name
 - Location of compensation site: Bank Service Area, County, $\frac{1}{4}$ $\frac{1}{4}$, Section, Township, Range, Latitude/Longitude.
 - Site Sponsor Information: Name, address, phone number, other identifying information
 - General description of design concept for the mitigation site.
 - Details of upland buffers. Include surrounding land uses.
 - Planned hydrology
 - Table showing credit totals broken out by mitigation activity, community type, acreage, and buffer category.

- II. Introduction and Purpose:** Discuss how the mitigation site meets the goals and objectives for the watershed. Include the projected start and end dates for construction of the mitigation site.

- III. Identify Plan Developers and Expertise:** In order to develop a high-quality wetland mitigation project, a significant level of professional expertise and experience is required. The SMP should list the personnel working on the project and include reference to past projects and qualifications. Provide the names and professional experience information for the personnel responsible for investigating the proposed site and preparing the site plan, construction plans, and specifications.

- IV. Site Selection:** A description of the factors considered during the site selection process. This should include consideration of factors listed in the section Site Evaluation of the umbrella instrument specific to how it relates to the mitigation site. Explain why the proposed site was chosen and its potential for a successful mitigation site. Provide the detailed site location by County, Township, Range, and Quarter-Quarter section.

- V. Mitigation Objectives:** A description of the wetland type(s) and acres that will be restored, created, enhanced and/or preserved. A discussion of the wetland functions and services and how these functions and services address the needs of the watershed.

- VI. Baseline Information:** A description of the ecological characteristics of the proposed mitigation site and, in the case of an application for a federal or state required permit, the impact site. This should include descriptions of historic and existing conditions and other site characteristics appropriate to the wetland resource proposed as compensation.
 - survey of current contours;
 - summary of historic and current on-site land uses;

- description of current zoning designations;
- description of nearby land uses;
- description of any known historic/archeological resources on the site;
- assessment of the geology and soils on site using the county soil survey and some representative borings;
- description of current hydrology including channelized and un-channelized flows, groundwater, and tiling information;
- description of the present flora;
- description of fauna using the site;
- NRCS and WWI mapping of the site;
- wetland functions and services assessment of any wetlands existing on the site;
- floodplain mapping of the site;
- description of any state navigable waters on or near the site;
- description of the site in context of other wetlands, wildlife habitat, and natural areas (corridor concepts); and
- NHI search results.

VII. Figures: All Figures should be at the same scale. The following figures should be included in the SMP:

- Site location in service area
- USGS 1:24,000 quadrangle map One-foot contour map
- Historic aerial photos
- Baseline drainage, hydrology, vegetation
- NRCS soils
- Invasive species units by areal cover
- NRCS wetland determination
- Proposed communities
- Mitigation work plan actions
- Construction drawings
- Mitigation type by community, with credit ratios and acres
- Monitoring approach

VIII. Mitigation Work Plan: Detailed written specifications and work descriptions for the mitigation project, including, but not limited to, the geographic boundaries of the project; site access; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.

IX. Determination of credits: A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. The preferred method is a map delineating what credit ratio each area of the property will produce.

- X. Performance Standards:** Ecologically based standards (hydrology, plant survival, species composition, habitat features, etc.) that will be used to determine whether the mitigation project is achieving its objectives. Performance standards are a list of quantifiable objectives that must be met so that the project can be objectively evaluated to determine if the site is developing into the desired resource type, providing the expected functions and services, and attaining any other applicable metric. Specific requirements and additional guidance for performance standards will be agreed upon by the sponsor, WDNR and the NRCS. Standards are often set on a case-by-case basis.
- XI. Credit Holder:** Identify the party responsible for selling credits generated from the mitigation site. Detail the methods for setting prices and how often they may be adjusted. Provide the credit holders preferred method of contact that will be provided to producers in order to purchase the credits.
- XII. Long-Term Management Plan:** Descriptions of how the mitigation project will be managed after performance standards are achieved to ensure the long-term sustainability of the resource. The party responsible for the long-term management must be identified. Include the funding mechanism for long term management as well as anticipated costs.
- XIII. Adaptive Management Plan:** This plan should address strategies to address unforeseen issues associated with site conditions or other components of the compensatory mitigation plan. This plan will guide decisions for revising the original construction plan and implement measures to address both foreseeable and unforeseen circumstances that could adversely affect the success of the mitigation project. The plan must identify the party or parties responsible for implementing the adaptive management plan.
- XIV. Implementation Schedule:** Provide details on timelines for the construction work, plantings, inspections, and follow-up monitoring. Identify other permits that may be required for the construction work.
- XV. Site Photos:** Representative photos showing the site pre-construction. Photos should focus on areas of the site where construction will take place and other areas important to project success.
- XVI. Site Protection Instrument:** A description of the legal arrangements and documents including verification of site ownership used to ensure the long-term protection of the mitigation site. Contact the permitting agencies for appropriate templates of conservation easements or comparable legal instruments.

Appendix B – As-built Report Outline

1. Approved Credit Release Table with as-built column highlighted
2. Brief Project Overview
 - a. Timeline
 - b. Location
 - c. Credits
 - d. Acres
 - e. Summary of mitigation actions in SMP
3. Construction Log (can be narrative, table, list)
 - a. Timeline with dates attached to phases
 - b. Description of earthwork completed
 - c. Seeding and planting work completed
 - d. Construction/seeding dates
 - e. Wetland enhancement work completed if applicable (clearing, thinning, control)
4. Summary of changes made from the Final SMP during construction
 - a. Earthwork (describe any changes from SMP and show location on map)
 - b. Seeding and planting (species substitutions, changes in numbers/densities planted, changes in locations of seedings)
 - c. Any other changes that impact the site
5. Site Photos
 - a. Completion of earthwork, such as ditch fills, tile removal, grading
 - b. Planting activities such as shrubs, trees, or plugs
 - c. Water on site after rain events
 - d. Include dates photos taken and brief summaries
6. Site topo survey
 - a. Include figure with completed earthwork and elevations – overlay on SMP plan sheet with contours, label final elevations and areas of deviation
7. Seed mixes
 - a. Include full final mixes for each community
 - b. Note changes to species with strikethroughs or color change
 - c. Include figure of planting plan from Final SMP
8. Planting details
 - a. Species lists for trees, shrubs, plugs
 - b. Show planting locations on planting plan figure for each type
9. Monitoring locations
 - a. Describe setup and plot locations for vegetation monitoring and any changes made from Final SMP
 - b. Describe plan to monitor hydrology and any changes made from Final SMP
 - c. Include map of monitoring changes if necessary
10. Other information if available or needed
 - a. Altered access areas such as parking lots, trails, site access, burn breaks
 - b. Hydrographs with most recent well data, if applicable.
 - c. Descriptions of any work completed as required by the NRCS based on field visit observations

Appendix C – Monitoring Report Outline

- Project maps including: wetland communities types, and vegetation and hydrology monitoring locations.
- A description of maintenance and monitoring activities that occurred during the year, and overview bank site goals and performance standards.
- A table summarizing the progress of the site towards meeting each performance standard.
- A credit release table summarizing what credits have been released to date and what credits will be requested for the current year.
- A description of maintenance activities completed that year
- A description of maintenance activities planned for the upcoming year.
- Hydrologic measurements taken during the growing season, which may include water level elevations.
- Vegetation survey data results, which may include time meander surveys, vegetation plots, and vegetation transects.
- Photographs of the bank site taken during the growing season from fixed, repeatable locations that are representative of each plant community type.
- Other information as specified in the SMP or subsequently requested by the NRCS.

Appendix D – Request for Credit Withdrawal

1. Applicant Information

1a. Name:	
1b. Address:	1c. Phone:
1d. City, State, Zip Code:	1e. Email:

2. Project Information

2a. Address of Project (leave blank if same as above):	Legal Description			
	Quarter Section	Section	Range	Township
2b. Acreage of Wetland Impact:				
2c. Bank Service Area:	2d. Credit Need:			
2e. County:				
2f. Has any portion of project been completed? YES _____ NO _____ If "Yes" please give reasons in the Project Description box below.	2g. I understand that these credits may only be used for the purposes of NRCS Food Security Act compliance and does not affect any other federal or state permitting obligations. YES _____ NO _____			

Project Description:

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Please attach the following documents to your application

- Project map depicting all current and planned drainage features including the extend of land disturbance.
- Certified Wetland Determination
- Credit determination from NRCS
- Any documentation from DNR wetland staff or Army Corps of Engineers stating the lack of need for state or federal mitigation for your project.

By signing and submitting this application, I verify that all information is current and correct, and I have attached all requested documents to this application.

Applicant Signature: _____ **Date:** _____

Appendix E – Affidavit of Credit Purchase

Affidavit of WAMB Credit Purchase from the _____ Mitigation Site

Applicant Information	
Name:	
Address:	
Phone:	Email:
Project Summary	
Project Description	
Acreage of wetland impact	
Address of Agriculture Wetland Impact	
County	
Bank Service Area	
Coordinates	
Township, Range & 1/4-1/4 Section	
Compensation Details	
Wetland acreage impacted by agricultural activity	
Credits purchased to mitigate for the wetland impact	

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1. I certify that _____ has purchased ____ agricultural wetland mitigation credits from the _____ WAMB mitigation site. I understand that these credits may only be used for the purposes of NRCS Food Security Act compliance and does not affect any other federal or state permitting obligations.

Producer Signature

Date

2. I certify that _____ WAMB Mitigation Site has sold _____ agriculture wetland mitigation credits to _____ and that such debit has been noted on the master credit ledger.

Credit Holder Signature

Date

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Appendix G – WAMB Mitigation Sites

Mitigation Site Name:

Mitigation Site Sponsor:

Mitigation Site Credit Holder:

SMP Approval Date:

Wisconsin Agricultural Mitigation Bank
Umbrella Mitigation Banking Instrument

November 2024

Appendix H – Template Conservation Easement

(see following page)

Document Number

Document Title

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, WI 53707

**WISCONSIN AGRICULTURAL
MITIGATION BANK
CONSERVATION EASEMENT**
Sec. 23.09 (10), Wis. Stats

Form: 2200-294a
Rev. 10/2024

THIS WISCONSIN AGRICULTURAL MITIGATION BANK (“WAMB”) CONSERVATION EASEMENT (“Conservation Easement”) is made by and between [grantor name: if individual, state marital status, if married require signature of spouse; if business entity state address and state of incorporation] (“Grantor”) and the State of Wisconsin Department of Natural Resources (“Grantee”), who are collectively referred to herein as “Parties.”

RECITALS

WHEREAS, the Grantor is the owner of fee simple title to certain real property located in the [municipality] of [name], County of [name], Wisconsin and the portions of Grantor’s real property encumbered by this Conservation Easement are described and depicted in the attached Exhibit A (metes and bounds description), Exhibit B (survey), Exhibit C (access easement) and Exhibit D (survey or map of access easement) (collectively, the property encumbered by this Easement is hereinafter referred to as the “Easement Area”) totaling [x] acres, more or less;

WHEREAS, the Grantor and the Grantee have identified certain conservation/aesthetic values, maintenance measures and restorative needs, which include the creation or restoration of wetlands (hereinafter collectively referred to as the “Conservation Values”) in the Easement Area;

WHEREAS, these Conservation Values are documented in the [Name of Mitigation Bank] Site Mitigation Plan (SMP) for the Easement Area, which is located on file with the WAMB. The SMP includes baseline information, maintenance requirements and restorative measures; it describes the Conservation Values of the Easement Area 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, and thus may be amended from time to time;

WHEREAS, the Parties agree that the Easement Area may be open to the public for undeveloped hunting, trapping, fishing, hiking, and cross-country skiing, and other forms of quiet enjoyment after site establishment and restorative measures have been completed, only as provided herein and subject to the operation of state and federal law; [Only include this WHEREAS if the grantor would like to allow public access through this easement]

WHEREAS, the Grantee and Grantor desire, intend and have the common purpose of conserving and preserving in perpetuity Conservation Values in the Easement Area. These Conservation Values are to be achieved by maintaining the Easement Area, once restored, in a relatively natural condition through the placement of restrictions on the use of the Easement Area through the creation of this Conservation Easement, and by the Grantor’s conferring to the Grantee affirmative rights including enforcement authority to ensure the preservation of the Conservation Values of the Easement Area and the terms and conditions contained in the SMP;

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

Recording Area

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

Parcel Identification Number (PIN):

XXXX-XXXX-XX-XXXX

affirmative rights on lands for conservation purposes;

WHEREAS, the Wetland Conservation provisions of title XII of the Food Security Act of 1985, as amended, 16 U.S.C. Section 3822, et seq., along with other applicable federal law and policy, provide for the establishment of wetland mitigation banks led by the United States, Secretary of Agriculture, or by third parties;

WHEREAS, the United States of America (“United States”) acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (“NRCS”) is a Party to this Conservation Easement, to the extent its interest appears herein for the purpose of, at its sole discretion, monitoring and undertaking third-party enforcement rights as NRCS deems necessary to ensure the protection of the Conservation Values in perpetuity; and

WHEREAS, the Grantee 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, conditions, mutual promises and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby give, grant, bargain convey and confirm, with general warranty of title, to Grantee, its successors and assigns, a Conservation Easement in perpetuity in the Easement Area, and appurtenant rights of access to the Easement Area, in accordance with the following terms and conditions:

I. PURPOSE & IMPLEMENTATION OF THE CONSERVATION EASEMENT

1. The above WHEREAS clauses are hereby incorporated and adopted in full.
2. This conveyance is made pursuant to the Statewide Umbrella Mitigation Banking Instrument (“UMBI”) between the State of Wisconsin Department of Natural Resources (“DNR”) and the NRCS, which authorizes the use of mitigation bank credits as compensatory mitigation for the conversion of wetlands under terms contained therein. A signed copy of the UMBI is maintained by DNR and NRCS in their respective offices. It is the intention of the Parties that the Easement Area be used in perpetuity as a “mitigation bank site” from which “wetland credits” will be produced to mitigate for lost wetland values, acreage, and functions associated with the conversion of wetlands located in the applicable regional service area (“RSA”), as provided in the UMBI, as it may be amended from time to time.
3. The purpose of this Conservation Easement is to ensure that the restoration activities and maintenance measures on wetlands, contemplated by the SMP and consistent with the UMBI, in the Easement Area will be implemented, and the Conservation Values will not be destroyed or degraded to ensure that USDA program participants that have purchased mitigation credits are not later found out of compliance when impacted wetlands are mitigated in accordance with the Food Security Act of 1985, as amended.
4. To implement the purposes of this Conservation Easement, the Parties agree as follows:
 - a. Grantor grants to Grantee the right to enter the Easement Area and to undertake restoration, protection, management, monitoring and other actions it deems necessary to implement the UMBI and SMP on the Easement Area. NRCS may also access the Easement Area for these purposes. This access may be by vehicle or other reasonable modes of transportation. Where practicable, such access shall be via the access identified in Exhibit B.
 - b. If Grantee acquires or holds the underlying fee title in the Easement Area, the interest conveyed by this Easement will not merge with fee title but will exist and continue to be managed as a separate

estate.

- c. Any rights not specifically reserved to Grantor herein are deemed to have been acquired by Grantee. Any ambiguities in this Conservation Easement shall be construed in favor of Grantee to implement the wetland and conservation purposes for which this Easement is being acquired pursuant to the UMBI and SMP.

II. RIGHTS AND REMEDIES OF THE GRANTEE

1. The Grantee 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 Easement Area, consistent with the SMP and any subsequent amendments thereto, and/or to enjoin non-compliance by appropriate injunctive relief. The Grantee 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 Grantee to institute any enforcement action against the Grantor for any changes to the Easement Area due to causes beyond the Grantor's control and without the Grantor's fault, negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties), or acquiescence. In the event that the Grantor fails to timely and completely perform one or more of its duties and responsibilities in the SMP and such failure shall continue for thirty (30) days following receipt of written notice from the Grantee, then in addition to any other rights and remedies available in law or equity, the Grantee may enter the Easement Area and perform all acts required to remedy the issue. The Grantor shall be responsible for all reasonable and necessary costs and expenses incurred in fulfilling the SMP's objectives.
2. The Grantee and their respective contractors, agents and invitees, shall have the right to enter the Easement Area, to conduct restoration activities and engage in long-term management and monitoring according to the SMP and UMBI, to inspect the Easement Area to determine if the Grantor is complying with the terms and conditions of this Conservation Easement and the SMP, and to observe, study, record and make scientific studies and educational observations.
3. For the purposes stated herein, the Grantee and its contractors, agents and invitees, shall have the right of access for ingress and egress to the Easement Area across adjacent or other properties of the Grantor, whether or not that property is adjacent to or appurtenant to the Easement Area. Where practicable, such access shall be via the designated right-of-way for access purposes is described in Exhibit B, which is appended to and made part of this conservation easement.
4. The Grantee may install, operate, maintain, repair, remove and replace water control structures, consistent with the SMP, for the purpose of protecting, re-establishing, and enhancing wetlands and their functional values. These rights include but are not limited to the right to transport construction materials and equipment to and from any existing or proposed water control structure.
5. The Grantee shall have the right to establish or re-establish vegetation through seeding or plantings, consistent with the SMP.
6. The Grantee shall have the right to manipulate vegetation, topography and hydrology on the Easement Area consistent with the SMP through diking, pumping, water management, excavating, burning, cutting,

pesticide application and other suitable methods for the purposes of protecting and enhancing Conservation Values and complying with the terms of the SMP and UMBI.

5. Enforcement. The Parties agree that this Easement may be introduced in any enforcement proceeding. If there is a failure of any Party to comply with any of the provisions of this Easement, Grantee, shall have any legal or equitable remedy provided by law and the right:
- a. To enter upon the Easement Area to perform necessary work for prevention of, or remediation of, damage to the Conservation Values, wetlands, and associated uplands; and
 - b. To assess all expenses incurred by the Grantee including any legal fees or attorney fees) against the Grantor, to be owed immediately to the Grantee as applicable.

In the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Conservation Easement without the prior written consent of the Secretary of the United States Department of Agriculture, then, at option of such Secretary, all right, title, and interest in this easement shall become vested in the United States upon the recording of documentation to that effect.

III. COVENANTS OF THE GRANTOR

The Grantor agrees and covenants that:

1. There shall be no commercial, agricultural, or industrial activity undertaken or allowed within the Easement Area.
2. There shall be no buildings, dwellings, barns, roads, trails, tracks, advertising signs, billboards or other personal property built, placed, or allowed to remain on the Easement Area unless determined in writing by DNR to be consistent with the SMP and UMBI.
3. There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals, or other materials within the Easement Area except in conjunction with authorized management activities consistent with the SMP.
4. There shall be no dumping of trash, plant materials or compost, ashes, garbage or other unsightly or offensive material, especially including any Hazardous Material as defined herein or toxic waste, within the Easement Area.
5. The hydrology of the Easement 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 Easement Area, unless the alterations are determined by DNR in writing to be consistent with the SMP and UMBI.
6. All agricultural uses (e.g., plowing, tilling, haying, mowing, cultivating, planting, harvesting or other agricultural activities) are prohibited within the Easement Area. This prohibition does not preclude mowing, planting, or herbicide use conducted for the purpose of enhancing the ecological functions and values of the Easement Area consistent with the SMP. The Grantor shall not stock animals or allow or encourage the grazing of animals on the Easement Area.
7. The Grantor is responsible for compliance with all federal, state and local laws governing the control of noxious weeds within the Easement Area.

8. There shall be no operation of motorized vehicles or equipment within the Easement Area except in conjunction with activities authorized herein.
9. The Grantor shall not subdivide the property, parcels, or land making up the Easement Area into smaller parcels through legal or de facto means. The Easement Area shall remain as a single, indivisible parcel under common ownership managed in accordance with the SMP and UMBI in order to protect the Conservation Values contained in the Easement Area.
10. There shall be no activities performed or permitted which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, other wetland functions and values, or the Conservation Values in the Easement Area.
11. Any activities to be carried out on the Grantor's land that is immediately adjacent to, and functionally related to, the Easement Area are prohibited if such activities will alter, degrade, or otherwise diminish the functional value or Conservation Values of the Easement Area.
12. The Grantor shall report to Grantee any conditions or events which may adversely affect the wetland values and functions of the Easement Area.
13. All costs involved in the establishment or maintenance of fences and similar facilities to exclude livestock from the Easement Area are the responsibility of the Grantor. The installation or use of fences which have the effect of preventing wildlife access and use of the Easement Area are prohibited on the Easement Area, easement boundary, or on the Grantor's land that is immediately adjacent to, and functionally related to, the Easement Area.
14. The Grantor is responsible for maintaining any non-public portions of the access route described in Exhibit B such that the access route can be traversed by a standard four-wheel all-terrain vehicle at least annually. Grantee may undertake such maintenance if the maintenance performed by Grantor is insufficient, and in that instance, Grantor shall be responsible for Grantee's reasonable costs.

IV. GENERAL PROVISIONS

1. This Conservation Easement shall run with and burden the Easement Area in perpetuity and shall bind the Grantor and its heirs, successors, and assigns, lessees, and any other person claiming rights under the Grantor.
2. This Conservation Easement is fully valid and enforceable by any assignee of the Grantee, whether assigned in whole or in part. The Grantee may assign or transfer this Conservation Easement and the rights contained herein to any federal or state agency, or conservation organization meeting the definition of a "holder" under Wisconsin Statute Sec. 700.40, for management and enforcement purposes. NRCS must approve any assignment in writing before that assignment may be made.
3. The Grantor shall timely pay all real property taxes, charges and assessments levied by competent authority on the Easement Area.
4. Nothing herein shall be construed as limiting the Grantor's right to sell, give or otherwise convey the entire Easement Area provided that the Easement Area remains under common ownership and the

conveyance states in writing that it continues to be subject to the terms of this Conservation Easement, which runs with the land and binds Grantor's successors and assigns.

5. The Grantor 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 Easement Area. The Grantor agrees to notify the Grantee of any such conveyance in writing and by certified mail no less than thirty (30) days before the conveyance. The terms, conditions, covenants and restrictions of this Conservation Easement remain binding on subsequent owners or users even if not inserted into such conveyance.
6. The terms "Grantor" and "Grantee" as used herein may be singular or plural and shall be deemed to include, respectively, the Grantor and its heirs, successors, personal representatives, executors and assigns, as well as the Grantee and its successors and assigns.
7. This Conservation Easement may not be modified or amended except by execution and recording of a written instrument signed by the Grantor, the Grantee. Any such instrument must be approved in writing by NRCS prior to recording. Any such modifications or amendments that purport to extinguish the Conservation Easement, or any part thereof, shall only be considered in cases where the continued use of the property for the purposes of this Conservation Easement is impossible or impractical, as determined in writing by DNR and NRCS, and shall be subject to the provisions set forth in the following subparagraphs. Modifications or amendments that purport to modify the Easement Area boundary are subject to the Boundary Line Adjustment subparagraph below.
 - a. Extinguishment clause. Pursuant to I.R.S. Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of a perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution.
 - b. Determination of Proceeds. Grantor and Grantee agree that the donation of a perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.
 - c. Boundary line adjustments clause. Pursuant to I.R.S. Notice 2023-30, Grantor and Grantee agree that boundary line adjustments to the real property subject to the restrictions may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line's location.
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. Irrespective of any violations by the Grantor of the terms of this Easement Deed, this easement shall survive and run with the land in perpetuity.

9. This Conservation Easement shall be governed by and construed under the laws of the State of Wisconsin or federal law, as applicable.
10. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with or any liability under any Environmental Law relating to the operations or conditions of the Easement Area. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to defend and indemnify Grantee and the United States, and their respective heirs, successors, personal representatives, executors and assigns against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath, or from the Easement Area, or arising from or connected with a violation of any Environmental Laws by Grantor, or any other owner or operator of the Easement Area prior to this Conservation Easement. Grantor's indemnification obligation shall not be affected by any authorizations provided by the DNR or the United States to the Grantor with respect to the Easement Area or any restoration activities carried out by the Grantor at the Property.

11. The Grantor releases and agrees to hold harmless, indemnify, and defend the Grantee, and the United States, and their respective employees, agents, contractors, and invitees and the successors and assigns of each (each an "Indemnified Party") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, unless due solely to the negligence of the relevant Indemnified Party; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, or regulation, by any person other than the relevant Indemnified Party, in any way affecting, involving or related to the Easement Area; (3) the enforcement of any agreement(s) made outside of this Conservation Easement between the Grantor and any party, other than the relevant Indemnified Party, related to the management of the Easement Area.

IN WITNESS THEREOF, the Grantor has caused this Conservation Easement to be executed on its behalf this _____ day of _____, 20____.

By: _____(SEAL)
Jon C. Doe, Trustee
Grantor, Jon C. Doe and Jane M. Doe Revocable Trust dated May 16, 2012

By: _____(SEAL)
Jane M. Doe, Trustee
Grantor, Jon C. Doe and Jane M. Doe Revocable Trust dated May 16, 2012

STATE OF WISCONSIN)
) SS.
_____ COUNTY)

Personally appeared before me this _____ day of _____, 20____, the above named Jon C. Doe and Jane M. Doe, Trustees for The Jon and Jane Doe Revocable Trust dated May 16, 2012, and to me known to be the persons who executed the foregoing Conservation Easement and acknowledged that they executed and delivered the same as for the act and deed of the Grantor.

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

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

*Names of Grantor(s) must be typed.

IN WITNESS THEREOF, the Grantee accepts this Conservation Easement on this _____ day of _____, 20__.

State of Wisconsin
Department of Natural Resources
for the Secretary

By: _____(SEAL)
Benjamin Callan
Waterways Program Director

State of Wisconsin)
) ss.
Dane County)

Personally came before me this _____ day of _____, 20__, the above named Benjamin Callan, Waterways Program Director, Bureau of Waterways, State of Wisconsin Department of Natural Resources, to me known to be the person who executed the foregoing instrument and acknowledged that he executed and delivered the same as for the act and deed of said Department of Natural Resources.

Aubrey Johnson
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

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EXHIBIT A
Metes & Bounds Description

EXHIBIT B
Survey

EXHIBIT C
Description of Access Easement

EXHIBIT D
Survey or Depiction of Access Easement