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State of Wisconsin
Department of Natural Resources
Bureau of Natural Heritage Conservation
Attn: Endangered Resources Review Program
PO Box 7921, Madison WI 53707-7921
dnr.wi.gov

Incidental Take Permit - Implementing Agreement

Form 1700-086 (09/20)

This Implementing Agreement is required in conjunction with all Incidental Take Permits per s. 29.604, Wis. Stats. The Implementing Agreement must be finalized with the Department of Natural Resources (WDNR) after the Incidental Take Conservation Plan has been approved by WDNR but before the incidental take public notice period may begin. Approval of this form alone does not indicate approval of an Incidental Take Permit application. For additional information regarding Incidental Take Permits, please visit (<http://dnr.wi.gov/topic/ERReview/ITApply.html>).

Instructions: Once an Incidental Take Conservation Plan has been finalized with WDNR, please complete and sign this form and return to the address above. Upon approval by the WDNR, a signed copy will be returned to the applicant listed below.

Notice: Personal information collected will be used for administrative purposes and may also be made available to requesters under Wisconsin's Public Records Law (ss. 19.31-19.39, Wis. Stats.). Additionally, Incidental Take Permits typically require a 30-day public notice period; the public notice may include some information provided on this form.

Section 1: Applicant Information

Applicant Type: ☐ Individual ☐ Business ☐ Corporation ☐ Institution ☐ Agency ☐ Other _____

Name of Person Completing Application	Organization (If Applicable)		
Mailing Address	City	State	ZIP Code
Telephone Number	Email Address		

Section 2: Landowner Information (if different than Section 1)

Name	Organization		
Mailing Address	City	State	ZIP Code
Telephone Number	Email Address		

Section 3: Project Information

Project Name:	Project Address (if applicable):
Project Type(s): <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Transportation (roads, railroads, trails) <input type="checkbox"/> Commercial <input type="checkbox"/> Utility <input type="checkbox"/> Other: _____	

Start Date (on-site disturbance):		End Date (on-site disturbance):		Total Acreage:		
County		<input type="radio"/> City <input type="radio"/> Town <input type="radio"/> Village of _____				
Township	Range	Direction	Section	Quarter Section	Quarter-Quarter Section	Additional Comments or Latitude/Longitude (in decimal degrees)
N		<input type="radio"/> E <input type="radio"/> W		<input type="radio"/> NW <input type="radio"/> NE <input type="radio"/> SW <input type="radio"/> SE	<input type="radio"/> NW <input type="radio"/> NE <input type="radio"/> SW <input type="radio"/> SE	
N		<input type="radio"/> E <input type="radio"/> W		<input type="radio"/> NW <input type="radio"/> NE <input type="radio"/> SW <input type="radio"/> SE	<input type="radio"/> NW <input type="radio"/> NE <input type="radio"/> SW <input type="radio"/> SE	

Section 4: Incidental Take Information

Incidental Take Permit Number (if known):	Date of Finalized Conservation Plan:
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Which species are likely to be incidentally taken as a result of the project? (include common and scientific names)

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Section 5: Implementing Agreement

This Agreement is entered into between the WDNR and the Applicant listed in Section 1 (hereafter referred to collectively as the "Parties"). The Parties understand and agree to the following:

1.0 RECITALS

This Agreement is entered into with regard to the following facts:

- 1.1 The proposed Project has been determined by the WDNR to have the potential to result in take of the Species identified in Section 4, and,
- 1.2 The Applicant, with technical assistance from the WDNR, has developed a series of measures, described in the Finalized Conservation Plan, to minimize and mitigate the effects of the proposed Project upon the subject Species and its associated habitats; and,

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

- 2.1 The term "Permit" shall mean an incidental take permit issued by the WDNR to Permittee pursuant to s. 29.604, Wis. Stats., of Wisconsin's Endangered Species Law.
- 2.2 The term "Permit Area" shall mean the Project Area described in Section 3 and the Conservation Plan.
- 2.3 The term "Permittee" shall mean the Applicant listed in Section 1.
- 2.4 The term "Conservation Plan" shall mean the Finalized Conservation Plan prepared for the proposed Project and approved by the WDNR, bearing the date identified in Section 4.
- 2.5 The term "Species" shall mean the species identified in Section 4.

3.0 CONSERVATION PLAN

Pursuant to the provisions of s.29.604(6m), Wis. Stats., of Wisconsin's Endangered Species Law, Permittee has read the Conservation Plan and requests that the WDNR issue an Incidental Take Permit (Permit) to allow the Species to be incidentally taken within the Permit Area as depicted and described in the Incidental Take Permit/Authorization Application and associated Conservation Plan. The Conservation Plan includes steps to minimize and mitigate the impact that the Species will suffer as a result of the Project.

4.0 INCORPORATION OF CONSERVATION PLAN

The Conservation Plan and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the Conservation Plan, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the Conservation Plan shall be interpreted to be supplementary to each other.

5.0 REQUIREMENTS OF THE CONSERVATION PLAN

In order to fulfill the requirements that will allow the WDNR to issue the Permit as provided in s. 29.604(6m)(c), Wis. Stats., the Conservation Plan sets forth measures that are intended to ensure that any take of the Species associated with the Project will be incidental and that the Project will, to the maximum extent practicable, minimize and mitigation impacts of the take; will provide adequate funding for the Conservation Plan; and will not appreciably reduce the likelihood of the survival or recovery of the Species within the state, the whole plant-animal community of which the Species is a part or the habitat that is critical to the Species' existence. It also includes measures that have been determined by the WDNR to be necessary or appropriate for purposes of the Conservation Plan.

6.0 COOPERATIVE EFFORT

In order that each of the requirements as set forth in Paragraph 5.0 hereof are fulfilled, each of the Parties to this Agreement shall perform certain specific tasks as more particularly set forth in the Conservation Plan. The Conservation Plan thus describes a cooperative program by WDNR and private interests to minimize and mitigate the effects of the proposed Project on the Species.

7.0 TERMS USED

Terms defined and utilized in the Conservation Plan and Wisconsin's Endangered Species Law shall have the same meaning when utilized in this Agreement, except as specifically noted.

8.0 PURPOSES

The purposes of this Agreement are: to ensure implementation of each of the terms of the Conservation Plan; to describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement; and, to ensure that all Parties agree to fully and faithfully perform the responsibilities described in the Conservation Plan and this Agreement.

9.0 TERM

This Agreement shall become effective on the date that the WDNR issues the Permit requested in the Incidental Take Application and shall remain in full force and effect until the Project is completed and all of the obligations in the Conservation Plan have been met, or until termination of the Permit, whichever occurs sooner

10.0 FUNDING

Permittee will provide all such funds as may be necessary to carry out the obligations under the Conservation Plan. The Permittee should notify the WDNR if the funding resources have materially changed, including a discussion of the nature of the change, from the information provided in the Conservation Plan.

11.0 RESPONSIBILITIES OF THE PARTIES IN IMPLEMENTATION OF THE CONSERVATION PLAN AND MONITORING RESPONSIBILITIES OF THE PERMITTEE

11.1 Responsibilities of the Permittee.

- a. The Permittee shall undertake all activities set forth in the Conservation Plan in order to meet the terms of the Conservation Plan and comply with the Permit.
- b. The Permittee agrees to allow WDNR reasonable access to the land surface portions of the Project site to monitor the terms of this Agreement and the Conservation Plan with 48-hour advance notice by WDNR.

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Section 5: Implementing Agreement (continued)

11.2 Responsibilities of the WDNR.

- a. The WDNR shall cooperate and provide, to the extent funding is available, technical assistance to the Permittee as detailed in the Conservation Plan.
- b. After issuance of the Permit, the WDNR shall monitor the implementation thereof, including each of the terms of this Agreement and the Conservation Plan in order to ensure compliance with the Permit, the Conservation Plan and this Agreement. WDNR agrees to comply with all Project safety requirements and to sign any necessary releases prior to accessing the Project site.

12.0 REMEDIES AND ENFORCEMENT

12.1 REMEDIES IN GENERAL

Except as set forth below, each Party shall have all remedies otherwise available under Wisconsin law to enforce the terms of this Agreement, the Permit, and the Conservation Plan, and to seek remedies for any breach hereof, subject to the following:

- a. NO MONETARY DAMAGES - No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:
 - (1) Retain Liability - All Parties shall retain whatever liability they would possess for their present and future acts or failure to act without existence of this Agreement.
 - (2) Land Owner Liability - All Parties shall retain whatever liability they possess as an owner of interests in land.
 - (3) Responsibility of the State of Wisconsin - Nothing contained in this Agreement is intended to limit the authority of the State of Wisconsin to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under Wisconsin's Endangered Species Law.
- b. INJUNCTIVE AND TEMPORARY RELIEF - The Parties acknowledge that the Species is unique and that its loss as a Species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.
- c. PENALTIES - The Permittee is subject to the penalties prescribed under s. 29.604(5), Stats., as well as other penalties that may be prescribed by law, including forfeitures and imprisonment, for failure to comply with the Conservation Plan and this Agreement, when resulting in the unlawful taking of an endangered or threatened species.

12.2 PERMIT SUSPENSION OR REVOCATION

Except as otherwise provided for under the terms of the Agreement, the Permit may be suspended or revoked if WDNR determines that the Permittee is not in compliance with the Conservation Plan or this Agreement.

12.3 LIMITATIONS AND EXTENT OF ENFORCEABILITY

Except as otherwise specifically provided herein, nothing in this Agreement shall be deemed to restrict the rights of the Permittee to the use or development of those lands, or interests in lands, constituting the Permit Area; provided, that nothing in this Agreement shall absolve the Permittee from such other limitations as may apply to such lands, or interests in lands, under other laws of the United States and the State of Wisconsin.

13.0 AMENDMENTS

Except as otherwise set forth herein, this Agreement and/or Conservation Plan may be amended consistent with Wisconsin's Endangered Species Law and with the written consent of each of the Parties hereto. Depending on the extent of amendments, an additional public comment period may be required.

14.0 MISCELLANEOUS PROVISIONS

14.1 NO PARTNERSHIP

Except as otherwise expressly set forth herein, neither this Agreement nor the Conservation Plan shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.2 SUCCESSORS AND ASSIGNS

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns during the effective period of this Agreement.

14.3 NOTICE

Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed to the addresses on page one of this form or at such other address as any Party may from time to time specify to the other Parties in writing.

14.4 ENTIRE AGREEMENT

This Agreement, together with the Conservation Plan and the Permit, constitutes the entire Agreement between the Parties. It supersedes any and all other Agreements, either oral or in writing among the Parties with respect to the subject matter hereof and contains all of the covenants and Agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or Agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

14.5 AVAILABILITY OF FUNDS

Implementation of this Agreement and the Conservation Plan by the WDNR is subject to the availability of funds to the WDNR. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the future state and federal budgets. The Parties acknowledge that the WDNR will not be required under this Agreement to expend any State agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

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Section 5: Implementing Agreement (continued)

14.6 DUPLICATE ORIGINALS

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

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14.7 THIRD PARTY BENEFICIARIES

This Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing Federal and State law.

14.8 RELATIONSHIP TO WISCONSIN'S ENDANGERED SPECIES LAW AND OTHER AUTHORITIES

The terms of this Agreement shall be governed by and construed in accordance with Wisconsin's Endangered Species Law under s. 29.604, Wis. Stats, and other applicable laws and regulations. In particular, nothing in this Agreement is intended to limit the authority of the WDNR to seek penalties or otherwise fulfill its responsibilities under Wisconsin's Endangered Species Law. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the WDNR as an agency of the government of the State of Wisconsin.

14.9 REFERENCES TO REGULATIONS

Any reference in this Agreement, the Conservation Plan, or the Permit to any regulation or rule of the WDNR shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

14.10 APPLICABLE LAWS

All activities undertaken pursuant to this Agreement, the Conservation Plan, or the Permit must be in compliance with all applicable State and Federal laws and regulations.

Section 6: Applicant Certification

I am the individual or authorized representative of the individual, business, corporation, institution, or public agency with overall responsibility for the taking of the listed Species identified in Section 4. To the best of my knowledge, the information I have provided is complete and accurate.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

Applicant Signature

Date Signed

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By

Date Signed