

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

**WETLAND COMPENSATORY
MITIGATION EASEMENT**
Sec. 281.36(8m), Wis. Stats
(effective 7-1-2012)

THIS GRANT OF A CONSERVATION EASEMENT is made by and between _____, (hereinafter referred to as the "Grantor"), and the State of Wisconsin Department of Natural Resources, (hereinafter referred to as "Grantee"), as a holder of a Conservation Easement pursuant to the provisions of s. 281.36(8m), Wis. Stats.

RECITALS

WHEREAS, the Grantors are the owners in fee title of certain real property located in the Town of _____, _____ County in the State of Wisconsin, more particularly described on the attached Exhibit A, (hereinafter referred to as the "Conservancy Area");

WHEREAS, the Grantors desire and intend that the natural elements and the ecological and aesthetic values of the Conservancy Area be maintained and improved in accordance with the terms and conditions of this Conservation Easement;

WHEREAS, the Grantors and Grantee both desire, intend and have the common purpose of conserving and preserving in perpetuity the Conservancy Area in a relatively natural condition by placing restrictions on the use of the Conservancy Area and by transferring from the Grantors to the Grantee, by the creation of a Conservation Easement on, over and across the Conservancy Area, affirmative rights to ensure the preservation of the natural elements and values of the Conservancy Area;

WHEREAS, the Grantors have received valuable consideration for the granting of this Conservation Easement.

NOW THEREFORE, the Grantors, for valuable consideration received, do hereby give, grant, bargain and convey to the Grantee, its successors and assigns, forever, a Conservation Easement in perpetuity over the Conservancy Area consisting of the following:

I. PURPOSE OF THE EASEMENT

The purpose of this easement is to ensure that a wetland compensatory mitigation site will not be destroyed or substantially degraded by any subsequent owner of or holder of interest in the property on which the compensatory mitigation wetland is located.

II. RIGHTS 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 property, consistent with the Site Mitigation Plan, titled, "_____" and dated _____, and subsequent amendments thereto, if any, a copy of which is attached hereto and incorporated herein and marked as Exhibit B, or to enjoin non-compliance by appropriate injunctive relief. The Grantee does not waive or forfeit the right to take action as may be

Recording Area

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

Parcel Identification Number (PIN):

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 Grantors for any changes to the Conservancy Area due to causes beyond the Grantors' control and without the Grantor's fault or negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties).

2. The Grantee, its contractors, agents and invitees, shall have the right to enter the Conservancy Area, in a reasonable manner and at reasonable times, for the purpose of inspecting the Conservancy Area to determine if the Grantors are complying with the terms and conditions of this Conservation Easement and the purposes of this grant, and further to observe, study, record and make scientific studies and educational observations.
3. The Grantee shall have the right to install, operate and maintain water control structures for the purpose of protecting, re-establishing and enhancing wetlands and their functional values. This includes the right to transport construction materials to and from the site of any existing or proposed water control structure.
4. The Grantee shall have the right to establish or re-establish vegetation through seedings or plantings.
5. The Grantee shall have the right to manipulate vegetation, topography and hydrology on the Conservancy Area through diking, pumping, water management, excavating, burning, cutting, pesticide application and other suitable methods for the purpose of protecting and enhancing wetlands and wetland vegetation.

III. COVENANTS OF THE GRANTOR

1. There shall be no commercial or industrial activity undertaken or allowed within the Conservancy Area.
2. There shall be no buildings, dwellings, barns, roads, advertising signs, billboards or other structures not related to conservation of wetland-based recreation or education purposes built or placed in the Conservancy Area.
3. There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals or other materials within the Conservancy Area except in conjunction with authorized management activities.
4. There shall be no dumping of trash, plant materials or compost, ashes, garbage or other unsightly or offensive material, especially including any hazardous or toxic waste within the Conservancy Area.
5. The hydrology of the Conservancy Area will not be altered in any way or by any means including pumping, draining, diking, impounding or diverting surface or ground water into or out of the Conservancy Area, unless consistent with the Site Mitigation Plan.
6. All agricultural uses are prohibited within the Conservancy Area (e.g. plowing, tilling, haying, cultivating, planting or other agricultural activities). This does not include native seed production activities, mowing, planting, or herbicide use conducted for the purpose of enhancing the ecological functions and values of the Conservancy Area consistent with the Site Mitigation Plan. The Grantor shall not stock animals or allow the grazing of animals on the Conservancy Area without prior written permission of the Grantee.

7. The Grantors are responsible for compliance with all federal, state and local laws governing the control of noxious weeds within the Conservancy Area.
8. There shall be no operation of motorized vehicles or equipment within the Conservancy Area except in conjunction with activities in conformance with Sections II and III herein.

IV. RESERVED RIGHTS

1. This Conservation Easement does not authorize entry upon or use of the Conservancy Area by the general public.
2. The Grantors and their invitees may hunt and fish in the Conservancy Area so long as they comply with all federal, state and local game and fishery regulations.
3. Nothing herein shall be construed as limiting the right of the Grantors to sell, give or otherwise convey the Conservancy Area, or any portion or portions thereof, provided that the conveyance is subject to the terms of this Conservation Easement.

V. GENERAL PROVISIONS

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

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

IN WITNESS THEREOF Grantor and Grantee have caused this instrument to be executed on their respective behalf effective this _____ day of _____, 20__.

Grantor (SEAL)

Grantor (SEAL)

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

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

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

ACCEPTED this _____ day of _____, 20____

State of Wisconsin
Department of Natural Resources
For the Secretary

_____(SEAL)
*

STATE OF WISCONSIN)
) ss
DANE COUNTY)

Personally appeared before me this _____ day of _____, 2011, the above named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

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

CONSENT TO EASEMENT BY LIEN HOLDER

(name of person or institution)

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

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

against said Premises, does hereby join in and consent to said conveyance free of said lien.

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

_____ (SEAL) _____ (SEAL)

STATE OF)
) ss.
_____ COUNTY)

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

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

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

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
SITE MITIGATION PLAN