

## Memorandum of Understanding

### Restoration and Management of the Milwaukee County Parks Puetz Road NRCS Mitigation Site

#### Wisconsin Agricultural Mitigation Bank

#### Milwaukee County Parks

The Wisconsin Agricultural Mitigation Bank (WAMB) administered/sponsored by the Wisconsin Department of Natural Resources (WDNR) intends to implement an NRCS wetland mitigation site on approximately 20 acres of land solely owned by Milwaukee County Parks (Milwaukee). The property, a part of Parcel #8619988001 (mitigation site), is located to the east of the intersection of E Puetz Rd and the railroad line in the Town of Oak Creek, Milwaukee County. The mitigation site was not purchased using any federal grant dollars, and the proposed project boundary will avoid all restrictive covenants or easements in place on the property.

WAMB mitigation sites must be protected in perpetuity by recording a conservation easement or comparable legal instrument on the property. The site protection instrument shall restrict activities to protect the restoration actions undertaken onsite. The conservation easement does not prohibit low impact outdoor activities (such as hunting, trapping, fishing, hiking, cross-country skiing, snowshoeing, wildlife viewing, research, and education).

The WDNR and Milwaukee agree to the following:

1. Site Planning
  - a. The WDNR, with input and approval from Milwaukee, will complete the Site Mitigation Plan (SMP) to guide mitigation site restoration, maintenance, monitoring, and long-term management activities. The ultimate site restoration approach and methods will be determined by the NRCS through their approval of the SMP.
  - b. The WDNR has contracted with Ducks Unlimited to consult on preconstruction design and planning including topographic, hydrology, and drain tile investigation and restoration approach.
  - c. WDNR will contract with consultants who may assist in site design, engineering, and creation of any construction drawings and plan sets required for the SMP, bid documents, or construction.
2. Site Implementation
  - a. The WDNR, with input and approval from Milwaukee, will contract with a qualified restoration professional to implement all site restoration activities detailed in the SMP including ditch filling, tile breaking, regrading, seeding, and invasive species control. Site implementation activities are planned to take place in the fall of 2023 after crops are harvested.
  - b. The WDNR, with input and approval from Milwaukee, will also contract with a qualified restoration professional to complete five years of maintenance activities (2024-2028), such as invasive species control, reseeding and prescribed burning. This maintenance component is required to meet vegetation performance standards as detailed in the SMP. Site maintenance

activities may cease before five years if performance standards are met early and only with permission from the NRCS. See Project Funding section below for more information.

- c. Milwaukee will enter into any needed agreements with WDNR contracted professionals to allow access and restoration activities to occur.
- d. WDNR staff will complete five years of site monitoring activities (2024-2028) and monitoring report creation. Monitoring may cease before five years if performance standards are met early and only with permission from the NRCS.

### 3. Project Funding

- a. The WDNR will fund all contracted mitigation site planning and site implementation activities listed above using funds received through an NRCS wetland mitigation grant (Grant #xxxxxx).
- b. The WDNR and Milwaukee may collaborate and explore opportunities to work together to gain efficiencies in completing the above mitigation site planning and site implementation activities, including using Milwaukee staff, equipment, or funding to complete said activities, but only upon written agreement by both parties.
- c. Completion of all restoration activities (not including Long Term Management) is ultimately the responsibility of the WDNR. Milwaukee is not obligated to provide any funding to implement any mitigation activities (not including Long Term Management).

### 4. Real Estate

- a. All NRCS mitigation sites must be protected by a perpetual conservation easement or comparable legal instrument. WDNR will develop and record a conservation easement on the mitigation site that will protect the restoration in perpetuity. This conservation easement will be robust enough to satisfy the protection requirements from the NRCS and the WAMB. This conservation easement must be reviewed and approved by the NRCS prior to recording.
- b. WDNR will complete all necessary title work on the property and will provide the information, if needed to Milwaukee.

### 5. Management of the Mitigation Site (2023-2028)

- a. To manage habitat according to desired habitat values and reduce the spread of invasive, non-native, species into the mitigation site, the WDNR, and their contractors, may use prescribed burning, cutting, mowing, and aquatic-safe herbicide applications in and around the mitigation site. Milwaukee may elect to participate or conduct any of these activities.
- b. In order to ensure hydrologic performance standards can be maintained in perpetuity, no new impoundments, scrapes, or excavations will take place on the mitigation site or in adjacent areas where lateral effects could alter the restored hydrology of the mitigation site, unless authorized through consultation with the WDNR or contained in the NRCS-approved SMP.
- c. Final project design in the SMP will be approved by the NRCS, which will be followed until final performance standards are met and final credits are released (anticipated to be in 2028)
- d. The vegetation targets on the mitigation site will be specified in the SMP. Communities may include upland prairie, wet mesic prairie, wet prairie and sedge meadow.
- e. Invasive species management during the monitoring phase will be coordinated by the WDNR to ensure that any habitat management activities are efficiently implemented on the mitigation site.

6. Communications between Milwaukee and the WDNR
  - a. Throughout project development, Milwaukee may participate in all project meetings, communication, and planning if desired.
  - b. The SMP will be created by the WDNR, with input and approval from Milwaukee. Final decisions concerning the SMP will be made by the WDNR, with Milwaukee agreement. All SMP decisions will be made with the goal of restoring wetland functions in perpetuity on the mitigation site
  - c. During the construction and maintenance phases on the mitigation site, the WDNR and its contractors will coordinate the timing of site activities with Milwaukee to the greatest extent possible.
  
7. Credit Sales
  - a. The NRCS will release credits for sale as milestones and restoration performance standards in the SMP are met. Milwaukee will hold the credits generated from this mitigation site and will sell the credits to Wisconsin producers.
  - b. Milwaukee will be responsible for setting the credit price and will do so in a manner that is fair and accessible for Wisconsin producers. Credit prices will be evaluated by Milwaukee annually and may be adjusted for inflation, market demand, long term management costs or other factors.
  - c. A typical credit sale process is outlined below:
    - (1) A producer identifies an agricultural activity that impacts a wetland, and they decide that they want to mitigate for that impact. The producer checks with the WDNR 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 producer fills out form AD-1026 and submits to their Farm Service Agency office. If necessary, the form will be routed to the NRCS, who provides the producer with a wetland determination and acreage of wetlands that would be impacted. The NRCS will inform the producer of their compliance options, one of which is purchasing credits from the WAMB.
    - (3) If the producer wishes to utilize WAMB mitigation credits, the NRCS issues a letter or email specifying the credits needed to mitigate for the impact. NRCS provides the producer with WDNR contact information to purchase credits.
    - (4) Producer completes the WDNR credit application and includes their wetland determination and NRCS credit need notice.
    - (5) WDNR reviews the application and, if accepted, provides the producer with a list of eligible credit holders to purchase credits from. If it is not accepted, the WDNR will inform the producer and NRCS.
    - (6) Producer 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 producer for payment.
    - (7) Once payment is complete, the credit holder issues the approved affidavit confirming purchase and sends to producer, NRCS, and WDNR. It is the responsibility of the producer to submit this documentation to the NRCS to show that their agricultural activity has been properly mitigated for.

- d. Milwaukee will notify the WDNR and NRCS in a timely manner confirming each sale once they have received funds from the producer.
- e. Revenue from credit sales may be used at the discretion of Milwaukee. However, a portion of credit sales should be preserved to fund long term management activities in perpetuity (see Long Term Management section below).

8. Long-Term Management

- a. The mitigation site will be designed to be a low maintenance site. However, long-term management activities will be necessary to maintain the mitigation site in accordance with the SMP. Milwaukee will be responsible for completing all long-term management activities detailed in the SMP.
- b. Once the 5-year maintenance period ends (approximately 2029), long-term management will begin. Milwaukee, in consultation with WDNR, will identify and administer any management activities necessary on the mitigation site.
- c. Milwaukee may elect to undertake long-term management activities themselves, or contract with a qualified restoration professional to accomplish identified maintenance activities.
- d. Long term management activities include herbicide spraying, reseeding, prescribed burns, mowing, easement monitoring and enforcement, and other activities as necessary.
- e. Milwaukee will reserve a minimum of 25% of all credit sales for long-term management activities.

Signed this day of \_\_\_\_\_, 2023

State of Wisconsin

Department of Natural Resources

---

WDNR Official, Insert WDNR Official Title Here

---

Milwaukee County Official, Insert Milwaukee County Official Title Here