

Attachment to the DOT/DNR Cooperative Agreement

Memorandum of Understanding

by and between the

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

and the

WISCONSIN DEPARTMENT OF TRANSPORTATION

on

**COMPENSATORY MITIGATION FOR UNAVOIDABLE WETLAND
LOSSES RESULTING FROM STATE TRANSPORTATION ACTIVITIES**

A. Purpose

The purpose of this document is to provide mutual departmental procedures for compensatory mitigation for unavoidable wetland losses resulting from State transportation activities.

B. Applicability

This memorandum of understanding applies to any transportation activity subject to the DOT/DNR Cooperative Agreement (COA) which establishes interagency liaison procedures in accordance with *Chapter 30.2022, Wis. Stats.*

C. Liaison Procedures for Wetland Compensatory Mitigation

1. All practicable measures to avoid/minimize wetland impacts related to the transportation project shall be conducted in accordance with state and federal wetland rules. Measures to avoid and minimize may include reducing roadway footprint, modifying the alignment, selecting an alternative route, avoiding higher quality wetlands, bridging over sensitive wetlands, and implementing modified construction techniques.
2. After wetland impacts related to the proposed transportation project have been avoided and minimized to the maximum extent practicable, compensation for all unavoidable wetland losses shall occur.
3. Compensation for wetland acres lost shall be based on an evaluation of direct impacts, and may also include indirect impacts, which are caused by the project but occur later in time and are reasonably foreseeable and estimated (for example, drainage changes resulting from the project). Impacts from private or local government land use developments are not impacts requiring compensatory mitigation under this policy.
4. Compensatory mitigation should be accomplished in concert with, or prior to, the construction of the transportation project.
5. Mitigation banking is the preferred compensation option, though DOT and DNR agree that other practicable and ecologically valuable project specific opportunities may be pursued on a

case-by-case basis.

6. DOT and DNR agree to work with the US Army Corps of Engineers to develop an in-lieu fee (ILF) program that addresses federal mitigation rules and meets the needs of the state agencies.
7. Consistent with federal rules and the *DOT Wetland Mitigation Banking Technical Guidelines*, the mitigation goal is to compensate wetland loss as near as practicable to the loss, recognizing important factors such as land acquisition availability, resource sensitivity, project schedules, and the linear nature and length of DOT projects that may cross multiple watersheds or ecoregions. Therefore, use of bank sites within bank service areas, but beyond the local watershed is acceptable.
8. Compensatory mitigation should be planned based on replacement of the acreage of the impacted wetlands using ratios established in the *DOT Wetland Mitigation Banking Technical Guidelines*.
9. DOT and DNR will work together to come to mutual agreement on a mitigation plan for each wetland compensatory mitigation site. DOT will develop a mitigation plan in accordance with the *DOT Wetland Mitigation Banking Technical Guidelines*. The final mitigation plan shall be completed during the transportation project's final design process.
10. Preference shall be given to compensatory mitigation that restores former or degraded wetlands and for techniques that result in low operation and maintenance costs.
11. The mitigation plan shall include performance standards and a monitoring plan that will allow an evaluation of the mitigation effort. The extent of monitoring necessary should be based on the criteria set forth in the *DOT Wetland Mitigation Banking Technical Guideline*.
12. The mitigation plan should include details on long-term protection for the site, including appropriate real estate instruments, who will own the mitigation site, a management strategy for the site that includes adaptive management concepts, and details about who will be responsible for long-term management of the site.
13. DNR and DOT agree to meet at least on an annual basis to determine where transportation needs have a likelihood to impact wetlands or sensitive resources. These meetings will enable both agencies to prioritize new statewide wetland mitigation banking initiatives.
14. Certain wetland types, such as aquatic bed, deep marsh, shallow marsh and mudflats, are considered hazardous wildlife attractants when positioned near airports. Consideration should be given to the vicinity of airports when wetland compensation sites are being selected within 5,000 feet of an airport serving piston-powered aircraft or 10,000 feet of an airport serving turbine-powered aircraft. According to guidance from the Federal Aviation Administration (FAA), these distances are measured from aircraft movement areas which include all runways and taxiways. Coordination on such potential sites will be initiated by the DOT Bureau of

Technical Services (Environment) and Aeronautics. Further coordination with wildlife damage management biologists (U.S. Department of Agriculture/ Wildlife Services) may be necessary. Palustrine wetland types with no open water, such as wet meadow and shrub swamp may be acceptable within the siting criteria recommended by FAA.

15. Any compensatory mitigation site proposal shall include coordination with US Army Corps of Engineers and with US Environmental Protection Agency, US Fish and Wildlife Service, and Federal Highway Administration where appropriate. Bank and bank site decisions will be made in accordance with the provisions of the *DOT Wetland Mitigation Banking Technical Guideline*.
16. This memorandum of understanding shall supersede the 2001 version entitled: *Compensatory Mitigation for Unavoidable Wetland Losses Resulting from State Transportation Activities*.

[Redacted Signature]

7/2/12

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources

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7/26/12

Mark Gottlieb, Secretary
Wisconsin Department of Transportation