

Appendix A: Wisconsin Department of Natural Resources Endangered Resources Review



State of Wisconsin / DEPARTMENT OF NATURAL RESOURCES

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711

101 S. Webster St.
Box 7921
Madison, WI 53707-7921

September 20, 2019

Sally Swenson
City of Madison
210 MLK Jr Blvd, Room 115
Madison, WI 53703

SUBJECT: Endangered Resources Review (ERR Log # 19-660)
Proposed Tenney Lagoon, Dane County, WI (T07N R09E S12)

Dear Sally Swenson,

The Bureau of Natural Heritage Conservation has reviewed the proposed project described in the Endangered Resources (ER) Review Request received September 9, 2019. The complete ER Review for this proposed project is attached and follow-up actions are summarized below:

Required Actions: 0 species

Recommended Actions: 2 species

No Follow-Up Actions: 5 species

Additional Recommendations Specified: Yes

This ER Review may contain Natural Heritage Inventory data (<http://dnr.wi.gov/topic/NHI>), including specific locations of endangered resources, which are considered sensitive and are not subject to Wisconsin's Open Records Law. Information contained in this ER Review may be shared with individuals who need this information in order to carry out specific roles in the planning, permitting, and implementation of the proposed project. **Specific locations of endangered resources may not be released or reproduced in any publicly disseminated documents.**

The attached ER Review is for informational purposes and only addresses endangered resources issues. **This ER Review does not constitute DNR authorization of the proposed project and does not exempt the project from securing necessary permits and approvals from the DNR and/or other permitting authorities.**

Please contact me at 608-264-8968 or via email at anna.rossler@wi.gov if you have any questions about this ER Review.

Sincerely,

Anna Rossler

Endangered Resources Review Program

cc:

Endangered Resources Review for the Proposed Tenney Lagoon, Dane County
(ER Log # 19-660)

Section A. Location and brief description of the proposed project

Based on information provided by the ER Review Request form and attached materials, the proposed project consists of the following:

Location	Dane County - T07N R09E S12
Project Description	Repair approximately 6,300 linear feet of vegetative stabilization along the Tenney Lagoon shoreline. Repairs will include replacing native vegetation that died due to prolonged high water after August 2018. Repairs will be completed with hand tools and small equipment. The lagoon banks and areas immediately adjacent will not be disturbed other than to plant plugs.
Project Timing	11/1/2019- 12/31/2020
Current Habitat	Tenney Lagoon is an urban park. The shoreline was stabilized and restored using native vegetation in 2015. The lagoon shoreline is buffered for a minimum of 10 feet behind the shore. The park area behind the buffer consists of turf grass and trees.
Impacts to Wetlands or Waterbodies	The project will occur within wetlands adjacent to Tenney Lagoon. The project will be completed with minimal disturbance and will primarily be completed with hand tools.
Property Type	Public
Federal Nexus	Yes

It is best to request ER Reviews early in the project planning process. However, some important project details may not be known at that time. Details related to project location, design, and timing of disturbance are important for determining both the endangered resources that may be impacted by the project and any necessary follow-up actions. Please contact the ER Review Program whenever the project plans change, new details become available, or more than a year has passed to confirm if results of this ER Review are still valid.

Section B. Endangered resources recorded from within the project area and surrounding area

	Group	State Status	Federal Status
Rusty Patched Bumble Bee Federal High Potential Zone	Bee	NA	HPZ
Rusty Patched Bumble Bee (<i>Bombus affinis</i>)	Bee	SC/FL	LE
Peregrine Falcon (<i>Falco peregrinus</i>)	Bird	END	
Lake Sturgeon (<i>Acipenser fulvescens</i>)	Fish~	SC/H	
Sheathed Pondweed (<i>Stuckenia vaginata</i>)	Plant~	THR	
Plains Gartersnake (<i>Thamnophis radix</i>)	Snake~	SC/H	
Blanding's Turtle (<i>Emydoidea blandingii</i>)	Turtle~	SC/P	SOC

For additional information on the rare species, high-quality natural communities, and other endangered resources listed above, please visit our Biodiversity (<http://dnr.wi.gov/topic/EndangeredResources/biodiversity.html>) page. For further definitions of state and federal statuses (END=Endangered, THR=Threatened, SC=Special Concern), please refer to the Natural Heritage Inventory (NHI) Working List (<http://dnr.wi.gov/topic/nhi/Wlist.html>).

Section C. Follow-up actions

Actions that need to be taken to comply with state and/or federal endangered species laws: None

Actions recommended to help conserve Wisconsin's Endangered Resources:

• Plains Gartersnake (*Thamnophis radix*) - Snake~

State Status: SC/H

Impact Type	Impact possible
Recommended Measures	Other
Description of Recommended Measures	<p>Plains Gartersnake may be present at the project site. While hand tools should not impact the snakes, if other equipment will be used, it is recommended to avoid or minimize impacts to the snakes. Avoiding impacts could include having someone walk slowly in front of machinery to facilitate moving snakes out of the way and working in a manner/direction that allows the snakes the ability to leave the active project site.</p> <p>Plains gartersnakes (<i>Thamnophis radix</i>) are a Species of Special Concern in Wisconsin and prefer almost any open-canopy wetland type (not open water) and adjacent open to semi-open canopy upland, including prairies, old fields and weedy vacant lots. They also prefer low-canopy vegetation (<24"), although they will occupy habitats with taller vegetation such as reed canary grass. This species can be active from mid-March through early November, usually emerging shortly after frost-out and remaining active until daytime temperatures fall consistently below 50 deg. F. Breeding usually occurs in April or early May but can occur in fall and live young are born between mid-July and mid-August.</p>

• Blanding's Turtle (*Emydoidea blandingii*) - Turtle~

State Status: SC/P Federal Status: SOC

Impact Type	Impact possible
Recommended Measures	Time of year restriction, Exclusion Fencing, Other
Description of Recommended Measures	<p>Blanding's Turtles may be present at the project site. No suitable wetlands should be impacted. However, suitable nesting habitat may be present in portions of the project site. The following measures can voluntarily be implemented to avoid impacts:</p> <p>Upland nesting habitat – Avoid work in suitable upland nesting habitat (sandy and/or well-drained soils) within 275 m (900 ft) of a wetland or water body during the Blanding's turtle's nesting period (May 20 – October 15). The installation and maintenance of exclusion fencing using the WDNR Amphibian and Reptile Exclusion Fencing Protocol is an avoidance option that can be used during this period as long as the exclusion fencing is installed between October 16 and May 19. Work can then be conducted within the fenced area at any time of year as long as the fencing is maintained.</p> <p>Otherwise if a turtle is found, please carefully move it to suitable habitat outside the project area.</p> <p>Please note, active dates are updated frequently in the spring, starting in early March, and can be checked here: http://dnr.wi.gov/topic/WildlifeHabitat/Herps.asp#regs</p> <p>Blanding's turtles (<i>Emydoidea blandingii</i>) are listed as a Species of Special Concern in Wisconsin. They utilize a wide variety of aquatic habitats including deep and shallow marshes, shallow bays of lakes and impoundments where areas of dense emergent and submergent vegetation exists, sluggish streams, oxbows and other backwaters of rivers, drainage ditches (usually where wetlands have been drained), and sedge meadows and wet meadows adjacent to these habitats. This species is semi-terrestrial and individuals may spend quite a bit of time on land. They often move between a variety of wetland habitats during the active season, which can extend from early March to mid-November. They overwinter in standing water that is typically more than 3 feet deep and with a deep organic substrate but will also use both warm and cold-water streams and rivers where they can avoid freezing. Blanding's turtles generally breed in spring, late summer or fall. Nesting occurs from about mid-May through early July depending on spring temperatures. They strongly prefer to nest in sandy soils and may travel up to 300 m (984 ft) from a wetland or waterbody to find suitable nesting sites. This species appears to display nest site fidelity, returning to its natal site and then nesting in a similar location annually. Hatching occurs from early August through mid-October. This species takes 17 to 20 years or more to reach maturity.</p>

Remember that although these actions are not required by state or federal endangered species laws, they may be required by other laws, permits, granting programs, or policies of this or another agency. Examples include the federal Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, State Natural Areas law, DNR Chapter 30 Wetland and Waterway permits, DNR Stormwater permits, and Forest Certification.

Additional Recommendations

Please note that erosion control netting (also known as erosion control blankets, erosion mats or erosion mesh netting) used to prevent erosion during the establishment of vegetation can have detrimental effects on local snake and other wildlife populations. Plastic netting without independent movement of strands can easily entrap snakes moving through the area, leading to dehydration, desiccation, and eventually mortality. Netting that contains biodegradable thread with the "leno" or "gauze" weave (contains strands that are able to move independently) appears to have the least impact on snakes and should be used in areas adjacent to or near any waterbody.

If erosion matting will be used for this project, use the following matting (or something similar): American Excelsior "FibreNet" or "NetFree" products; East Coast Erosion biodegradable jute products; Erosion Tech biodegradable jute products; ErosionControlBlanket.com biodegradable leno weave products; North American Green S75BN, S150BN, SC150BN or C125BN; or Western Excelsior "All Natural" products.

No actions are required or recommended for the following endangered resources:

• **Rusty Patched Bumble Bee Federal High Potential Zone - Bee**

State Status: NA Federal Status: HPZ

Impact Type	No impact or no/low broad ITP/A
Reason	Lack of Suitable Habitat within Project Boundary
Justification	This project falls within the Rusty Patched Bumble Bee High Potential Zone. However, this project will be restoring vegetation. Additionally, wetlands are not considered suitable overwintering habitat so it is unlikely winter work would disturb overwintering bees. No impacts are anticipated.

• **Rusty Patched Bumble Bee (*Bombus affinis*) - Bee**

State Status: SC/FL Federal Status: LE

Impact Type	No impact or no/low broad ITP/A
Reason	Lack of Suitable Habitat within Project Boundary
Justification	Rusty Patched Bumble Bee is known to occur near the project site. However, this project will be restoring vegetation. Additionally, wetlands are not considered suitable overwintering habitat so it is unlikely winter work would disturb overwintering bees. No impacts are anticipated.

• **Peregrine Falcon (*Falco peregrinus*) - Bird**

State Status: END

Impact Type	No impact or no/low broad ITP/A
Reason	Lack of Suitable Habitat within Project Boundary
Justification	No suitable habitat is present at or adjacent to the project site. No impacts are anticipated. Peregrine Falcon (<i>Falco peregrinus</i>), a bird listed as Endangered in Wisconsin, prefers relatively inaccessible rock ledges on the sides of steep bluffs and ledges on highrise buildings in urban areas. The required avoidance period is from March 15 through July 10.

• **Lake Sturgeon (*Acipenser fulvescens*) - Fish~**

State Status: SC/H

Impact Type	No impact or no/low broad ITP/A
Reason	Lack of Suitable Habitat within Project Boundary
Justification	It is unlikely that project activities will disturb Lake Sturgeon. No impacts are anticipated. Lake Sturgeon (<i>Acipenser fulvescens</i>), a fish listed as Special Concern, prefers large rivers and lakes. It also lives in the shoal waters of the Great Lakes. Inland it shows a preference for the deepest mid-river areas and pools. Spawning occurs from late April through early June in cold, shallow fast water.

• **Sheathed Pondweed (*Stuckenia vaginata*) - Plant~**

State Status: THR

Impact Type	No impact or no/low broad ITP/A
Reason	Lack of Suitable Habitat within Project Boundary

Justification	<p>This project occurs on the shoreline. Additionally, it is unlikely that Sheathed Pondweed is present in the lagoon. No impacts are anticipated.</p> <p>Sheathed Pondweed (<i>Stuckenia vaginata</i>), a Wisconsin Threatened plant, is found in shallow water of lakes and creeks. Blooming occurs throughout July; fruiting occurs early August through early September. The optimal identification period for this species is throughout August.</p>
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Section D. Next Steps

1. Evaluate whether the **'Location and brief description of the proposed project'** is still accurate. All recommendations in this ER Review are based on the information supplied in the ER Review Request. If the proposed project has changed or more than a year has passed and you would like your letter renewed, please contact the ER Review Program to determine if the information in this ER Review is still valid.
2. Determine whether the project can incorporate and implement the **'Follow-up actions'** identified above:
 - o 'Actions that need to be taken to comply with state and/or federal endangered species laws' represent the Department's best available guidance for complying with state and federal endangered species laws based on the project information that you provided and the endangered resources information and data available to us. If the proposed project has not changed from the description that you provided us and you are able to implement all of the 'Actions that need to be taken to comply with state and/or federal endangered species laws', your project should comply with state and federal endangered species laws. Please remember that if a violation occurs, the person responsible for the taking is the liable party. Generally this is the landowner or project proponent. For questions or concerns about individual responsibilities related to Wisconsin's Endangered Species Law, please contact the ER Review Program.
 - o If the project is unable to incorporate and implement one or more of the 'Actions that need to be taken to comply with state and/or federal endangered species laws' identified above, the project may potentially violate one or more of these laws. Please contact the ER Review Program immediately to assist in identifying potential options that may allow the project to proceed in compliance with state and federal endangered species laws.
 - o 'Actions recommended to help conserve Wisconsin's Endangered Resources' may be required by another law, a policy of this or another Department, agency or program; or as part of another permitting, approval or granting process. Please make sure to carefully read all permits and approvals for the project to determine whether these or other measures may be required. Even if these actions are not required by another program or entity for the proposed project to proceed, the Department strongly encourages the implementation of these conservation measures on a voluntary basis to help prevent future listings and protect Wisconsin's biodiversity for future generations.
3. If federally-protected species or habitats are involved and the project involves federal funds, technical assistance or authorization (e.g., permit) and there are likely to be any impacts (positive or negative) to them, consultation with USFWS will need to occur prior to the project being able to proceed. If no federal funding, assistance or authorization is involved with the project and there are likely to be adverse impacts to the species, contact the USFWS Twin Cities Ecological Services Field Office at 612-725-3548 (x2201) for further information and guidance.

Section E. Standard Information to help you better understand this ER Review

Endangered Resources (ER) Reviews are conducted according to the protocols in the guidance document Conducting Proposed Endangered Resources Reviews: A Step-by-Step Guide for Wisconsin DNR Staff.

How endangered resources searches are conducted for the proposed project area: An endangered resources search is performed as part of all ER Reviews. A search consists of querying the Wisconsin Natural Heritage Inventory (NHI) database for endangered resources records for the proposed project area. The project area evaluated consists of both the specific project site and a buffer area surrounding the site. A 1 mile buffer is considered for terrestrial and wetland species, and a 2 mile buffer for aquatic species. Endangered resources records from the buffer area are considered because most lands and waters in the state, especially private lands, have not been surveyed. Considering records from the entire project area (also sometimes referred to as the search area) provides the best picture of species and communities that may be present on your specific site if suitable habitat for those species or communities is present.

Categories of endangered resources considered in ER Reviews and protections for each: Endangered resources records from the NHI database fall into one of the following categories:

- Federally-protected species include those federally listed as Endangered or Threatened and Designated Critical Habitats.

Federally-protected animals are protected on all lands; federally-protected plants are protected only on federal lands and in the course of projects that include federal funding (see Federal Endangered Species Act of 1973 as amended).

- Animals (vertebrate and invertebrate) listed as Endangered or Threatened in Wisconsin are protected by Wisconsin's Endangered Species Law on all lands and waters of the state (s. 29.604, Wis. Stats.).
- Plants listed as Endangered or Threatened in Wisconsin are protected by Wisconsin's Endangered Species Law on public lands and on land that the person does not own or lease, except in the course of forestry, agriculture, utility, or bulk sampling actions (s. 29.604, Wis. Stats.).
- Special Concern species, high-quality examples of natural communities (sometimes called High Conservation Value areas), and natural features (e.g., caves and animal aggregation sites) are also included in the NHI database. These endangered resources are not legally protected by state or federal endangered species laws. However, other laws, policies (e.g., related to Forest Certification), or granting/permitting processes may require or strongly encourage protection of these resources. The main purpose of the Special Concern classification is to focus attention on species about which some problem of abundance or distribution is suspected before they become endangered or threatened.
- State Natural Areas (SNAs) are also included in the NHI database. SNAs protect outstanding examples of Wisconsin's native landscape of natural communities, significant geological formations, and archeological sites. Endangered species are often found within SNAs. SNAs are protected by law from any use that is inconsistent with or injurious to their natural values (s. 23.28, Wis. Stats.).

Please remember the following:

1. This ER Review is provided as information to comply with state and federal endangered species laws. By following the protocols and methodologies described above, the best information currently available about endangered resources that may be present in the proposed project area has been provided. However, the NHI database is not all inclusive; systematic surveys of most public lands have not been conducted, and the majority of private lands have not been surveyed. As a result, NHI data for the project area may be incomplete. Occurrences of endangered resources are only in the NHI database if the site has been previously surveyed for that species or group during the appropriate season, and an observation was reported to and entered into the NHI database. As such, absence of a record in the NHI database for a specific area should not be used to infer that no endangered resources are present in that area. Similarly, the presence of one species does not imply that surveys have been conducted for other species. Evaluations of the possible presence of rare species on the project site should always be based on whether suitable habitat exists on site for that species.
2. This ER Review provides an assessment of endangered resources that may be impacted by the project and measures that can be taken to avoid negatively impacting those resources based on the information that has been provided to ER Review Program at this time. Incomplete information, changes in the project, or subsequent survey results may affect our assessment and indicate the need for additional or different measures to avoid impacts to endangered resources.
3. This ER Review does not exempt the project from actions that may be required by Department permits or approvals for the project. Information contained in this ER Review may be shared with individuals who need this information in order to carry out specific roles in the planning, permitting, and implementation of the proposed project.

Appendix B: Invasive/Noxious/Aggressive Species Plant List

APPENDIX B - INVASIVE/NOXIOUS/AGGRESSIVE SPECIES

Botanical Name	Common Name	Native	Invasive Potential	MGO Prohibited Species	DNR Regulated Plant
Abutilon theophrasti	Velvet Leaf				Yes
Acer negundo	Boxelder		Yes		
Acer platanoides	Norway Maple		Yes		
Acer tartaricum	Amur Maple				Yes
Achyranthes japonica	Japanese Chaff Flower				Yes
Aegopodium podagraria	Goutweed		Yes		
Ageratina altissima	White snakeroot		Yes		
Akebia quianata	Chocalate vine				Yes
Alanthus altissima	Tree of Heaven		Yes		
Alliaria petiolata	Garlic Mustard		Yes		
Alnus glutinosa	Black/ European Alder				Yes
Ambrosia artemisiifolia	Common Ragweed		Yes		
Ambrosia trifida	Giant Ragweed		Yes		
Ampleopsis brevipedunculata	Porcelain berry		Yes		Yes
Anthriscus sylvestris	Wild Chervil				Yes
Arctium minus	Common Burdock		Yes		
Artemesia absinthium	Wormwood				Yes
Arundo donax	Giant Reed				Yes
Berberis spp.	Barberry				Yes
Berberis thubergii	Japanese Barberry		Yes		
Botomus umbellatus	Flowering Rush				Yes
Buenia orientalis	Hill Mustard				Yes
Campanula rapunculoides	Bellflower		Yes		
Caragana arborescens	Siberian Peashrub				Yes
Cardamine impatiens	Narrow Leaf Bittercress				Yes
Carduus acanthoides	Plumeless Thistle		Yes	Yes	
Carduus nutans	Musk Thistle		Yes	Yes	
Celastrus orbiculatus	Oriental Bittersweet		Yes		
Celastrus loesneri	Asian loesneri bittersweet				Yes
Centaurea biebersteinii	Spotted Knapweed		Yes		
Centaurea diffusa	Diffuse Knapweed				Yes
Centaurea jacea	Brown Knapweed				Yes
Centaurea nigra	Black Knapweed				Yes
Centaurea nigrescens	Tyrol Knapweed				Yes
Centaurea repens	Russian Knapweed				Yes
Centaurea solstitialis	Yellow star thistle				Yes
Chelidonium majus	Celandine Poppy		Yes		
Chenopodium album	Lamb's Quarters		Yes		
Chlechoma hederacea	Creeping Charlie		Yes		
Circeae lutetiana	Enchanter's Nightshade		Yes		
Cirsium arvense	Canada Thistle		Yes		
Cirsium palustre	Marsh Thistle				Yes
Cirsium vulgare	Bull Thistle		Yes		
Conium maculatum	Poison Hemlock		Yes		
Convallaria majalis	Lily-of-the-Valley		Yes		
Convolvulus arvensis	Field Bindweed		Yes		
Convolvulus sepium	Hedge Bindweed		Yes		
Cornus racemosa	Grey dogwood	Yes	Yes		
Coronilla varia	Crown Vetch		Yes		
Cynoglossum officinale	Hound's Tongue				Yes
Cytisus scoparius	Sctoch broom				Yes
Daucus carota	Queen Anne's Lace		Yes		
Digitalis lanata	Gregian foxglove				Yes
Dioscorea oppositifolia	Chinese yam				Yes
Dipsacus fullonum	Teasel			Yes	
Dipsacus spp.	Teasel		Yes		
Dispacus laniciatus	Cutleaf Teasel		Yes	Yes	
Elaeagnus augustifolia	Russian Olive		Yes		
Elaeagnus umbellata	Autumn Olive		Yes		
Elytrigia repens	Quack Grass		Yes		
Epilobium hirsutum	Hairy Willow Herb				Yes
Epipactus helleborine	Helleborine Orchid				Yes
Euonymus alatus	Burning Bush				Yes
Euphorbia cyparissias	Cypress Spurge				Yes
Euphorbia esula	Leafy Spurge		Yes	Yes	
Fallopia japonica (polygonum cuspidatum)	Japanese Knotweed		Yes	Yes	
Fallopia x bohemia	Bohemium knotweed				Yes
Filipendula ulmaria	Queen of the Meadow				Yes
Galeopsis tetrahit	Hemp nettle				Yes
Galium mollugo	White Bedstraw				Yes
Geum canadense	Wood Avens		Yes		
Glyceria maxima	Tall or Reed Manna Grass				Yes
Hackelia virginiana	Stickseed		Yes		
Hedera helix	English Ivy		Yes		

Botanical Name	Common Name	Native	Invasive Potential	MGO Prohibited Species	DNR Regulated Plant
Hemerocallis fulva	Daylily		Yes		
Heraclelum mantegazzianum Sommier & Levier	Giant Hogweed			Yes	
Hesperis matronalis	Dame's Rocket		Yes		
Humulus japonicus	Japanese Hops		Yes		
Impatiens glandulifera	Policeman's Helmet				Yes
Impatiens balfourii	Balfour's Touch-Me-Not				Yes
Iris pseudacorus	Yellow Flag Iris				Yes
Knautia arvensis	Field Scabiosa				Yes
Lactuca canadensis	Wild Lettuce	Yes	Yes		
Lactuca serriola	Prickly Lettuce		Yes		
Lamium galeobdolon	Yellow Archangel		Yes		
Lamium spp.	Deadnettle		Yes		
Leonurus cardiaca	Motherwort		Yes		
Lepidium latifolium	Perennial pepperweed				Yes
Lespedeza cuneata	Chinese Lespedeza				Yes
Leymus arenarius	Lyme or Sand Ryegrass				Yes
Ligustrum obtusifolium	Border Privet		Yes		
Ligustrum vulgare	Common Privet		Yes		
Linaria dalmatica	Dalmatian Toadflax				Yes
Lonicera spp.	Honeysuckle		Yes		
Lotus corniculatus	Birdsfoot Trefoil		Yes		
Lysimachia nummularia	Moneywort				Yes
Lysimachia vulgaris	Garden Yellow Loosestrife				Yes
Lythrum salicaria	Purple loosestrife		Yes	Yes	
Lythrum virgatum	Wanded Loosestrife				Yes
Melilotus spp.	Sweet Clover		Yes		
Microstegium vimineum	Japanese Stilt Grass				Yes
Morus alba	White Mulberry		Yes		
Myosotis sylvatica	Woodland Forget-Me-Not				Yes
Nasturtium officinale	Watercress				Yes
Oplismenus hirtellus ssp. Undulatifolius	Wavy Leaf Basket Grass				Yes
Poa pratensis	Kentucky Bluegrass		Yes		
Parthenocissus quinquefolia	Virginia Creeper	Yes	Yes		
Pastinaca sativa	Wild Parsnip		Yes	Yes	
Paulownia tomentosa	Princess Tree				Yes
Petasites hybridus	Butterfly Dock				Yes
Phalaris arundinacea	Reed Canary Grass		Yes		
Phellodendron amurense	Amur cork tree				Yes
Phragmites australis	Common Reed		Yes	Yes	
Phytolacca acinosa	Himalayan Pokeweed		Yes		
Phytolacca americana	American Pokeweed		Yes		
Pimpinella saxifraga	Scarlet Pimpernel				Yes
Polygonum perfoliatum	Mile-a-minute vine				Yes
Polygonum sachalinense	Giant knotweed				Yes
Populus alba	White Poplar				Yes
Populus grandidentata	Big-tooth aspen		Yes		
Populus tremuloides	Quaking Aspen		Yes		
Pueraria lobata	Kudzu				Yes
Quercus acutissima	Sawtooth Oak				Yes

Botanical Name	Common Name	Native	Invasive Potential	MGO Prohibited Species	DNR Regulated Plant
Ranunculus ficaria	Fig Buttercup		Yes		
Rhamnus cathartica	Common Buckthorn				Yes
Rhamnus frangula	Glossy Buckthorn				Yes
Ribes spp.	Gooseberry		Yes		
Robinia hispida	Rose Acacia				Yes
Robinia pseudocacia	Black Locust		Yes		
Rosa multiflora	Multiflora Rose		Yes		
Rubus americana	Himalayan blackberry				Yes
Rubus phoenicolasius	Wineberry				Yes
Rubus spp.	Rasberries		Yes		
Rumex crispus	Curly Dock		Yes		
Setaria spp.	Foxtail Grasses		Yes		
Solanum dulcamara	Deadly Nightshade		Yes		
Solidago canadensis	Canada Goldenrod		Yes		
Solidago sempervirens	Seaside Goldenrod				Yes
Sonchus spp.	Sow Thistle		Yes		
Sorbaria Sorbifolia	False Spirea				Yes
Sorghum halepense	Johnson Grass				Yes
Symphyotrichum subulatum	Annual Salt Marsh Aster				Yes
Taeniatherum caput-medusae	Medusahead				Yes
Tanacetum vulgare	Tansy				Yes
Torilis arvensis	Spreading hedgeparsley				Yes
Torilis japonica	Hedge Parsley		Yes		
Toxicodendron radicans	Poison Ivy		Yes	Yes	
Tussilago farfara	Colt's foot				Yes
Typha spp.	Cattails		Yes		
Ulmus pumila	Siberian Elm		Yes		
Urtica dioica	Stinging Nettle			Yes	
Valeriana officinalis	Garden Heliotripe				Yes
Verbascum thapus	Mullein		Yes		
Viburnum opulus	Highbush cranberry		Yes		
Vinca minor	Vinca		Yes		
Vincetoxicum nigrum	Black swallow-wort				Yes
Vincetoxicum rossicum	Pale Swallow-wort				Yes
Vitis spp.	Wild Grape	Yes	Yes		
Wisteria floribunda/sinensis	Japanese/Chinese wisteria				Yes
Zanthoxylum americanum	Prickly Ash		Yes		
Salix interior	Sandbar Willow				
Cottonwood	Populus deltoides				

Appendix C: Permits

Wisconsin Department of Natural Resources
Permit and Correspondence

From: [Peich, Wendy M - DNR](#)
To: [Lerner, Sarah](#)
Cc: [Peich, Wendy M - DNR](#)
Subject: RE: Tenney Park Restoration
Date: Friday, September 6, 2019 12:51:22 PM

Hi Sarah,

You do not need any additional authorization to replant vegetation associated with the shoreline biostabilization project and that died as a result of the August 2018 flood.

Thanks for checking!!

Wendy

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Wendy Peich

Phone: (608) 267-3125

DNRWMSPublicInquiry@wisconsin.gov

From: Kubicek, Richard H - DNR

Sent: Wednesday, September 4, 2019 2:56 PM

To: Peich, Wendy M - DNR

Cc: SLerner@cityofmadison.com

Subject: FW: Tenney Park Restoration

Wendy – Please see attached from Sarah Lerner from the City of Madison. This is out of my purview.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Richard H. Kubicek

[Departmental Archaeologist/](#)

[Departmental Historic Preservation Officer](#)

Cultural Resource Unit

Bureau of Environmental Analysis & Sustainability

Wisconsin Department of Natural Resources – GEF2/EA7

101 S. Webster St.

Madison, WI 53703

Cell Phone: 608-445-8395

Richard.kubicek@wisconsin.gov



dnr.wi.gov



From: Lerner, Sarah <SLerner@cityofmadison.com>

Sent: Thursday, August 29, 2019 4:28 PM

To: Kubicek, Richard H - DNR <richard.kubicek@wisconsin.gov>

Subject: Tenney Park Restoration

Hi Richard –

We were given your contact information by Katie Kaliszewski from the Wisconsin State Historical Society. Last year, several of the shoreline plants that were installed as part of the Tenney Park shoreline biostabilization project died as a result of the August 2018 flood. I am working on putting together plans and specifications to replace these plants. The shoreline plantings were originally part

of a WDNR permit submittal that included a series of larger projects to restore the shoreline and add park improvements. This project was permitted by the DNR under the attached permit. The work that we are planning for spring of 2020 will only include replacing the dead forb, sedge/rushes, and grasses, along with a few shrubs and potential trees. I wanted to check in to see if we would need any DNR permitting for this work. I've attached the original permit application and approved permit from the WDNR.

Thank you,

Sarah Lerner, LEED AP, RLA

Landscape Architect

City of Madison Parks Division

City-County Building, Rm 104

210 Martin Luther King, Jr. Blvd.

Madison, WI 53703-3342

slerner@cityofmadison.com

T: 608.261.4281





June 22, 2015

IP-SC-2015-13-00895 & 00896

City of Madison
Eric Knepp
210 MLK Jr Blvd, Room 104
Madison, WI 53703

Dear Mr. Knepp:

The Department of Natural Resources has completed its review of your applications for permits to perform Tenney Lagoon Shoreline Restoration and Tenney Park Bike Path projects at Tenney Park in the SE quarter of Section 12, T7N, R9E, City of Madison, Dane County. You will be pleased to know your applications are approved with a few limitations.

I am attaching a copy of your permit, which lists the conditions that must be followed. A copy of the permit must be posted for reference at the project site. **Please read your permit conditions carefully so that you are fully aware of what is expected of you.**

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (608) 275-3481 or email wendy.peich@wisconsin.gov.

Sincerely,

Wendy Peich
Water Management Specialist

cc: Simone Kolb, Project Manager, (651) 290-5730, U.S. Army Corps of Engineers
Conservation Warden

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**Miscellaneous structure and shore stabilization PERMITs
IP-SC-2015-13-00895 & 00896**

The City of Madison is hereby granted under Section 30.12(3m), Wisconsin Statutes, a permit to place shore stabilization and structures on the bed of Tenney Park Lagoon, in the City of Madison, Dane County, also described as Section 12, Township 7 North, Range 9 East, subject to the following conditions:

PERMIT

1. You must notify Wendy Peich at phone (608) 275-3481 or email wendy.peich@wisconsin.gov before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before 06/22/2018 . If you will not complete the project by this date, you must submit a written request for an extension prior to expiration of the initial time limit specified in the permit. Your request must identify the requested extension date. The Department shall extend the time limit for an individual permit or contract for no longer than an additional 5 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original permit expiration date unless the Department extends the permit in writing or grants a new permit.
3. **This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit.** If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. Please note that erosion control netting/mats used to prevent erosion during the establishment of vegetation can have detrimental effects on local wildlife. Plastic netting without independent movement of strands can easily entrap small animals moving through the area, leading to dehydration, desiccation, and eventually mortality. Selection of erosion matting must prevent wildlife impacts. **Erosion control matting used on this project should be made from natural fiber only, without any synthetic mesh or netting.**
5. **Plastic mesh turf reinforcement is to only be placed at the Wall pavilion location.**
6. You must notify Wendy Peich at least two days before the lagoon drawdown begins. Draw down of the lagoon should occur over a few days to give the fish time to retreat. The Lagoon must only be drained to the elevation needed to access the shoreline areas as indicated in the project plans. The project will be staged to ensure that the Lagoon is drawn down for the least amount of time necessary and will not be drawn down past October 15th, 2015.
7. Before you start your project, you must first obtain any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your project. These local and federal authorities are responsible for determining if your project complies with their requirements.
8. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
9. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
10. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

11. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
12. You must submit a series of photographs to the Department, within one week of completing work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
13. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes, or this permit.
14. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at:
http://dnr.wi.gov/topic/stormwater/standards/const_standards.html.
15. You must not deposit or store any of the removed materials in any wetland or below the ordinary high watermark of any waterway. All removed materials must be placed out of the floodway of any stream.
16. Appropriate erosion control measures must be in-place and effective during every phase of this project.
17. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.
18. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount necessary for construction. Areas where soil is exposed must be protected from erosion by seeding and mulching, sodding, diversion of surface runoff, installation of straw bales or silt screens, construction of settling basins, or similar methods as soon as possible after removal of the original ground cover as described in the Wisconsin Construction Site Handbook (BMP's).
19. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.
20. The operation of any construction equipment below the ordinary high water mark will be kept to the minimum.
21. You must supply a copy of this permit to every contractor associated with this project.
22. No other portion of the wetland may be disturbed beyond the area designated in the plans.
23. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps.
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.

4. **Wash your equipment** with hot (>140° F) and/or high pressure water,

- OR -

Allow your equipment to **dry thoroughly for 5 days.**

FINDINGS OF FACT

1. The City of Madison has filed an application for permits to stabilize the shore and place a structure on the bed of Tenney Park Lagoon, in the City of Madison, Dane County, also described as S12, T7N, R9E.
2. The project consists of creating a vegetated buffer for 3325 linear feet, placement of coir logs for 2757 linear feet, placing stone shore treatment along the Johnson Street bike path and at 11 shore line access points for a total of 485 feet of stone treatment. The project will also place turf reinforcement in front of the Wall Pavilion and Muskrat deterrent at various locations.
3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
4. Tenney Park Lagoon is a navigable water (and no bulkhead exists at the project site.)
5. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
6. The proposed project will only temporarily disturb 0.6 acres of riparian wetlands if constructed in accordance with this permit.
7. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an equivalent analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.
8. The Department of Natural Resources has completed all procedural requirements and the project as permitted will comply with all applicable requirements of sections 30.12(3m), 281.36 Wisconsin Statutes and Chapters NR 102, 103, 328, 329, 341 and 347 of the Wisconsin Administrative Code.

The applicant was responsible for fulfilling the procedural requirements for publication of notices under s. 30.208(5)(c)1m., Stats., and was responsible for publication of the notice of pending application under s.30.208(3)(a), Stats. or the notice of public informational hearing under s.30.208(3)(c), Stats., or both. S. 30.208(3)(e), Stats., provides that if no public hearing is held, the Department must issue its decision within 30 days of the 30-day public comment period, and if a public hearing is held, the Department must issue its decision within 20 days after the 10-day period for public comment after the public hearing. S. 30.208(5)(bm), Stats., requires the Department to consider the date on which the department publishes a notice on its web site as the date of notice.

9. The structure or deposit will not materially obstruct navigation because it will not result in the water ward extension of land and will be placed along the shoreline only.
10. The structure or deposit will not be detrimental to the public interest because the shore treatments and restoration will provide improved wildlife and fisheries habitat by reducing/eliminating shore erosion into the lagoon. The access points will encourage further recreation and access to the waterbody.

11. The activity will not cause environmental pollution as defined in s. 299.01(4).
12. No material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30 day period for filing a petition for judicial review.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and sections NR 2.03, 2.05, and 310.18, Wis. Admin. Code, and if the petitioner is not the applicant the petition must include the following information:

- A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed permit or contract is allowed to proceed.
- A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the project, as proposed, may result in a violation of Chapter 30, Wis. Stats.
- A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at South Central Region Headquarters, Wisconsin on June 22nd, 2015.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By _____


Wendy Peich
Water Management Specialist

U.S. Army Corp of Engineers Permit



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MN 55101-1678

REPLY TO
ATTENTION OF

July 13, 2015

Operations
Regulatory (2015-00836-ADJ)

City of Madison
Eric Knepp
210 Martin Luther King Jr. Blvd., Rm. 104
Madison, Wisconsin 53703

Dear Mr. Knepp:

We have reviewed information about a permit application from the City of Madison to temporarily impact 0.6 acre of wetland adjacent Tenney Lagoon to stabilize shorelines for the purpose of enhancing aquatic habitat. The project site is in the Sect. 12, T. 7N., R. 9E., Dane County, Wisconsin..

This activity is authorized under Section 2(a)(12) Aquatic Habitat Restoration, Establishment, and Enhancement Activities of Department of the Army General Permit (GP-002-WI) **PROVIDED THE ENCLOSED CONDITIONS ARE FOLLOWED AND YOU OBTAIN CONFIRMATION THAT SECTION 401 WATER QUALITY CERTIFICATION HAS BEEN GRANTED OR WAIVED FOR THE PROJECT** from the Wisconsin Department of Natural Resources (WDNR). Your project **IS NOT** authorized by this **general permit** until you obtain this confirmation of water quality certification from WDNR.

You should contact Wendy Peich of the WDNR office in Fitchburg at (608) 275-3481, concerning water quality certification for your project.

If your project will require off-site fill material that is **not** obtained from a licensed commercial facility, you must notify us at least five working days before start of work. A cultural resources survey may be required if a licensed commercial facility is not used.

This General Permit is valid until May 31, 2016, unless reissued, or revoked. The time limit for completing the work described above ends two years from the date of this letter. It is the permittee's responsibility to remain informed of changes to the General Permit program. If this authorized work is not undertaken within the above time period, or the project specifications have changed, our office must be contacted to determine the need for further approval or re-verification.

It is your responsibility to ensure that the work complies with the terms of this letter and the enclosures **AND TO OBTAIN ALL REQUIRED STATE AND LOCAL PERMITS AND APPROVALS BEFORE YOU PROCEED WITH YOUR PROJECT.**

A preliminary jurisdictional determination (JD) has been prepared for the site of your project. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps representative identified in the final paragraph of this letter. You also may provide new information for further consideration by the Corps to reevaluate the JD. If this JD is acceptable, please sign and date both copies of the Preliminary Jurisdictional Determination Form and return one copy to the address below within 15 days from the date of this letter.

U.S. Army Corps of Engineers
20711 Watertown Road, Suite F
Waukesha, Wisconsin 53186

If you have any questions, contact Anthony Jernigan in our Waukesha office at (651) 290-5729. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



for
Tamara E. Cameron
Chief, Regulatory Branch

Enclosures

Copy furnished to (email):
Wendy Peich, WDNR

GENERAL INFORMATION

Persons proposing to do work should note that, in ALL cases, GP-002-WI requires that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practicable. Also, activities that would adversely affect federal endangered plant or animal species or certain cultural or archaeological resources, or that would impair reserved Native American tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights, are not eligible for authorization under GP-002-WI.

Department of the Army Permit General Conditions:

1. GP-002-WI expires on May 31, 2016. Unless otherwise specified in the St. Paul District's letter confirming your project complies with the requirements of this GP, the time limit for completing work ends upon the expiration date of GP-002-WI. If you find that you require additional time to complete authorized activities, submit your time extension request to this office for consideration at least three months before the expiration date is reached.
2. You must maintain the activity authorized by GP-002-WI in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain an activity authorized by the reporting GP (2.a), or abandon it without a good faith transfer; you must obtain a modification of the authorization from this office, which may require restoration of the area. If you wish to transfer responsibility for completion or maintenance of the project to another, please contact this office so we may provide you with the necessary documentation to transfer the authorization.
3. If you discover any previously unknown historic or archaeological remains while accomplishing any activity authorized by GP-002-WI, you must immediately stop work and notify this office of what you have found. The St. Paul District will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. You must allow representatives from this office and the WDNR to inspect the proposed project site and the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in

accordance with the terms and conditions of GP-002-WI.

5. If a conditioned water quality certification has been issued for your project by the WDNR, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must also comply with the other GP-002-WI terms and conditions specified below as well as any project specific conditions imposed by the St. Paul District.

Further Information:

1. Congressional Authorities: Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), **only**. Work that also requires authorization under Section 10 of the Rivers and Harbors Act must be authorized separately through other GPs or individual permits.
2. Limits of this Authorization:
 - a. GP-002-WI does not obviate the need to obtain other federal, state, or local authorizations required by law.
 - b. GP-002-WI does not grant any property rights or exclusive privileges.
 - c. GP-002-WI does not authorize any injury to the property or rights of others.
 - d. GP-002-WI does not authorize interference with any existing or proposed federal project.
3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination by this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. **Reevaluation of Decision.** This office may reevaluate its decision on an authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The applicant fails to comply with the terms and conditions of this general permit.
- b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. A reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate.

6. This office may also reevaluate its decision to issue GP-002-WI at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

GP-002-WI STANDARD CONDITIONS

1. **Discretionary Authority.**
The Corps retains discretionary authority to require a standard individual permit review of any activity eligible for authorization under GP-002-WI based on concern for the aquatic environment.
2. **Federal Trust Responsibility to Indian Tribes.**
Projects the Corps finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the federal trust responsibility will be considered in the Corps evaluation. Based on treaty rights, no activity or its operation may impair reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
3. **Form and Confirmation of Authorization.**
Every GP-002-WI authorization that requires submission of an application will be

confirmed in writing by the Corps. Any confirmation issued may include required special conditions.

4. Grandfather Provision.

Activities that were determined to be non-reporting under GP-002-WI prior to May 31, 2011 AND that had commenced prior to that date shall be completed no later than April 16, 2013. Reporting activities previously confirmed by our office in writing as authorized under GP-002-WI (expiration dates April 16, 2011 or May 31, 2011), continue to be authorized under the terms of the Corps project verification letter.

5. Case-by-Case Conditions.

The authorized activity must comply with any special conditions that may have been added by the Corps or by a state, tribe, or the United States Environmental Protection Agency in its Section 401 Water Quality Certification or consistency determination under the Coastal Zone Management Act. Such conditions will be specifically identified in any Corps authorization.

6. Avoidance and Minimization.

Discharges of dredged or fill material into waters of the United States must be avoided and minimized to the maximum extent practicable).

7. State Water quality Certification and Coastal Zone Management (CZM) Consistency Determination.

Some GP-002-WI authorizations may not be valid unless and until the WDNR has confirmed that the activity complies with state water quality certification and/or CZM consistency determination is obtained from or waived by the Wisconsin Coastal Management Program. If such a condition applies, it will be noted in the Corps authorization letter for the project. Refer to conditions 27 and 28 at the end of this document.

8. Proper Maintenance.

Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

9. Erosion and Siltation Controls.

Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Work should be done in accordance with state-approved published practices.

Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or

planting and maintaining vegetative cover, to prevent subsequent erosion. Cofferdams shall be constructed and maintained so as to prevent erosion into the water. If earthen material is used for cofferdam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion. All non-biodegradable erosion controls must be removed within two weeks of site stabilization unless otherwise conditioned in the Corps project confirmation letter.

10. Removal of Temporary Fills.

Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation. The timeframe for completing this removal shall be:

- a. Not later than the timeframe stipulated in the activity description (unless extended in writing by our office);
- b. Not later than the timeframe stipulated in our office's confirmation letter; or
- c. Not longer than two weeks from the date the temporary fill was placed in waters of the United States (condition c. applies only if a timeframe is not otherwise established by applying a. or b. above).

11. Federal Threatened and Endangered Species.

GP-002-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act (see Standard Condition 27a.x.(a) below for information regarding compliance with Chapter 29.604 Wisconsin State Statute).

- a. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA) or which is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the Corps if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized.

- b. Authorization of an activity under GP-002-WI does not authorize the take of a threatened or endangered species as defined under the federal ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the United States Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the ESA.

Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the United States Fish and Wildlife Service and National Marine Fisheries Service,

WDNR or their world-wide web pages on the internet.

12. Historic Properties, Cultural Resources.

GP-002-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 106 of the National Historic Preservation Act (NHPA). No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) is authorized, until the Corps has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the Corps in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the NRHP, and shall not begin the activity until notified by the Corps that the requirements of the NHPA have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the NRHP. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Office must be contacted for further instruction.

13. Spawning Areas.

Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

14. Obstruction of High Flows.

To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

15. Adverse Effects from Impoundments.

If the discharge creates an impoundment of water, adverse effects on the aquatic system due to the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

16. Waterfowl Breeding Areas.

Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

17. Navigation.

No activity may cause more than a minimal adverse effect on navigation.

18. Aquatic Life Movements.

No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the

area, unless the activity's primary purpose is to impound water.

19. Equipment.

Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

20. Water Quality Standards.

All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable federal, state, and local water quality and effluent standards on a continuing basis.

21. Preventive Measures.

Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a way that allows them to enter the watercourse as a result of spillage, natural runoff, or flooding.

22. Disposal Sites.

If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark), the site must be securely diked or contained by an acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. Construction of containment areas, whether bulkhead or upland disposal site, must be complete prior to the placement of any dredged material.

23. Suitable Fill Material.

All fill (including riprap), if authorized under this permit, must consist of suitable material (e.g. no trash, debris, car bodies, asphalt, etc..) free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act). In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Office (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the Corps.

24. Water Intakes/Activities.

An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

25. Spill Contingency Plan.

A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant

should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the state Emergency Management Duty Officer at 1-800-943-0003 and the National Response Center at telephone number 1-800-424-8802.

26. Other Permit Requirements.

No Corps GP-002-WI authorization eliminates the need for other local, state or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

27. State Section 401 Certification Conditions and Limitations (dated April 28, 2011):

a. **GENERAL CONDITIONS:**

i. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the proposed discharge for compliance with this certification and applicable laws and to inspect permitted discharges for compliance with this certification and applicable laws.

ii. Once wetland work commences, all wetland construction activities must be continuous (on a daily basis) until the project is completed and the site is stabilized.

iii. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount mulching, sodding, diversion of surface runoff, installation of straw bales or silt screens, construction of settling basins, or similar methods as soon as possible after removal of the original ground cover as described in the Wisconsin Construction Site Handbook (BMP's).

iv. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.

v. Final site stabilization requires the re-establishment of native vegetation and must not contain any exotic species.

vi. Flush all other equipment with hot water of 105° F. to 110° F. for a period of 30 minutes or hot water of 140° F. for a period of 5 minutes; or, instead of flushing equipment, leave the equipment in a sunny location so that it dries completely (at least five full days).

vii. Inspect all equipment surfaces, scrape off any attached mussels, remove any aquatic plant materials (fragments, stems, leaves, or roots), and dispose of removed mussels and plants in a garbage can prior to leaving the water access area.

viii. You must ensure that all equipment used for the project has been adequately decontaminated for zebra mussels prior to being used in other waters of the state. All equipment that comes in contact with infested waters including, but not limited to, tracked vehicles, barges, boats, turbidity curtain, sheet

pile, and pumps must be thoroughly disinfected.

ix. If any conditions of this certification are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.

x. The following activities are not eligible for certification under this water quality certification action for GP-002-WI:

(a) Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation or which is likely to destroy or adversely modify the habitat of such species.

(b) Activities that result in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species that normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

(c) Activities detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.

(d) Activities, individually or cumulatively, detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

xi. Applicants seeking authorization under this regional general permit (except the non-reporting general permit) shall complete a Joint State/Federal Permit Application and submit two copies of each to the appropriate local COE office and the local WDNR Water Management Permit Intake Specialist. Applications for water quality certification must be complete as determined by the WDNR. Please note an application fee is required for state water quality certification activities identified under Section II below.

b. **WATER QUALITY CERTIFICATION:**

i. The WDNR grants water quality certification for the **Non-Reporting GP** subject to compliance with all applicable conditions in GP-002-WI and compliance with conditions 3.b.27(a).i. through xi. above.

ii. The WDNR grants water quality certification for projects that satisfy all applicable conditions of GP-002-WI under the **Reporting GP** subject to the **General Conditions** above, and:

iii. The applicant receives written confirmation from the department that their proposed activity(s) is consistent with the requirements of **NR 299 Water Quality Certification**, Wis. Adm. Code, and the Department confirms that the applicant has adequately demonstrated that no other practicable alternative exists which would not adversely impact wetlands and would not result in other significant adverse environmental consequences and the

Department confirms that the activity is consistent with the requirements of NR 103.08, Wis. Adm. Code.

iv. Certification for Hydropower

Projects under this General Permit is conditionally approved when the applicant has received State Individual Water Quality Certification under the FERC regulatory process.

condition of GP-002-WI. Applicants will be notified of this condition in the Corps's GP reporting authorization for projects in these areas.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the normal processing time for confirming activities eligible for authorization under this certification may be extended (by written notice from WDNR to the applicant).

c. NOTICE OF APPEAL RIGHTS:

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. This notice is provided pursuant to section 227.48(2), Stats.

28. Wisconsin Coastal Management Program (WCMP) Conditions.

The WCMP's Federal consistency determination for GP-002-WI provides that no GP-002-WI authorization for an activity taking place in coastal wetlands identified as ridge and swale complexes and/or wetlands adjacent to the Mink River (Door County), and the Kakagon and Bad Rivers (Ashland County) will be valid unless and until a Federal consistency determination is granted or waived by the WCMP. This requirement therefore is incorporated as a permit