



Highway Maintenance Manual

Bureau of Highway Maintenance

Chapter 07 Roadside Management

January 2018

Section 20 Miscellaneous Parcels and Easements

Subject 01 Mitigation Sites

1.0 Authority

Federal [Executive Order 11990](#), entitled "Protection of Wetlands" and dated May 24, 1977 requires Federal agencies to take action to avoid adversely impacting wetlands wherever possible, to minimize destruction of wetlands, to preserve the values of wetlands and to prescribe procedures to implement the policies and procedures of this Executive Order. The Federal Highway Administration (FHWA) provides oversight to the department ensuring compliance with the Clean Water Act and other federal water regulations. The Wisconsin Department of Natural Resources (DNR) provides state water quality oversight. State and federal regulations for water related activities are numerous and strictly enforced. For a more complete listing of wetland related rules and regulations see [FDM 20-10-10](#), Federal National Resources, Policies and Regulations, [FDM 20-20-15](#), State Water Resource Statutes and the [DOT/DNR Cooperative Agreement](#).

2.0 Background

The department must avoid or minimize adverse environmental impacts on wetlands during the course of routine highway maintenance and construction projects. In the case of adverse wetland impacts that cannot be avoided, the department must first minimize, and then mitigate, unavoidable wetland losses. Mitigation Sites are sites the department has purchased and developed for the sole purpose of mitigating those losses. They may be located within highway right of way or on independent parcels. They are purposely designed to serve a specific function and their existence fulfills a project approval contingency imposed by state and federal agencies. If they are not maintained as designed or are subjected to non-compatible uses, they will deteriorate, and will no longer function as intended and will not comply with the project approval provisions.

These contingency agreements typically obligate the department to make large repairs in perpetuity. Repairs to the original design (e.g. to ditches, weirs, etc.) are usually considered to be the department's responsibility. Wetland mitigation properties may also be transferred to other government agencies or interested groups. In such cases, long-term day-to-day maintenance commitments are often attached to the deed via covenant and are expected to be performed by the operating agency/controlling authority.

The department's Office of General Counsel has approved covenants for these purposes. They are incorporated into property deeds at the time of transfer to ensure U.S. Army Corps of Engineers (COE) 404 permit requirements are met.

3.0 Site Use and Development Restrictions

The restrictions shown in Exhibit A may appear in deed language for Wisconsin Department of Transportation (WisDOT) wetland mitigation sites transferred to others.

Contact the regional environmental coordinator, real-estate acquisition specialists or the Bureau of Technical Services, Environmental Services Section, ecologist at Hill Farms State Transportation Building for specific real-estate covenants and maintenance agreements governing these parcels.

Note: Certain covenants and the statement on inspection give the COE authority to inspect wetland mitigation sites on all transfers of WisDOT wetland mitigation sites to future owners such as the DNR, the U.S. Fish and Wildlife Service (USFWS), the County, etc. This puts the department in compliance with Federal guidelines on Wetland Mitigation Banking.

4.0 Mitigation Sites on Existing Right of way

When a mitigation site exists within existing right of way, e.g. within a large interchange infield area, routine maintenance such as removal or control of noxious weeds, fence repair, and minor mowing may be done by the county under the Routine Maintenance Agreement (RMA).

When major general maintenance is needed and determined to be the responsibility of the department, the work may be included in a county's work program for the next calendar year if funds are available. The county work program project proposal should include a description of the work and an estimate of cost.

When extensive maintenance beyond the scope of the RMA is needed to maintain conformance to permit provisions, the region should program the work under the improvement program.

5.0 Mitigation Sites Off Right of way

Mitigation sites may be located on parcels independent from highway right of way. Long-term maintenance for these parcels may be governed by property deed covenants, formal maintenance agreements entered into by the department and other agencies, conditions of permits or combination of documents.

When a mitigation site is located off normal highway right of way, any required maintenance should be negotiated between the department's acquiring organization and the regional maintenance section and be funded by the responsible organization.

The regional program development section should notify the regional maintenance supervisor of maintenance requirements for mitigation sites and make arrangements to get the work done.

Contact the Bureau of Technical Services, Environmental Services Section to obtain a current listing of wetland mitigation sites owned and operated by the department.

6.0 Patrol and Enforcement

Natural resource violations that occur on wetland mitigation sites are to be reported to local DNR or USFWS wardens. Other civil and criminal violations should be reported to the local sheriff's office.

EXHIBIT A

The following is a list of activities that are typically prohibited when mitigation sites are transferred:

Covenants:

WisDOT imposes the following restrictive covenants ("restrictions") that shall run with and bind the CONSERVANCY AREA in perpetuity:

- A. USES.** There shall be no commercial, industrial or residential activity undertaken or allowed within the CONSERVANCY AREA.
- B. BUILDINGS AND STRUCTURES.** There shall be no buildings, dwellings, barns, roads, advertising signs, billboards or other structures built or placed in the CONSERVANCY AREA, except that structures essential to maintaining the site or that enhance the public's use of the site may be constructed on non-wetland portions of the CONSERVANCY AREA upon prior written approval of WisDOT and the Corps. Interpretive signs describing features of the site or vegetation or wildlife upon the site may be installed anywhere on the CONSERVANCY AREA with the prior written approval of WisDOT and the Corps so long as the construction and installation of the sign does not involve wetland fill.
- C. TOPOGRAPHY.** There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals or other materials. There shall be no plowing, landscaping, bulldozing, or other activity that would alter the topography of the CONSERVANCY AREA.
- D. DUMPING/DISPOSAL.** There shall be no dumping of trash, ashes, garbage or other unsightly or offensive material, including, but not limited to, any hazardous or toxic waste. Nor shall there be dumping or depositing of other materials if such action would alter the topography or hydrology of the CONSERVANCY AREA.
- E. WATER.** The hydrology of the CONSERVANCY AREA will not be altered in any way or by any means including, but not limited to, pumping, draining, diking, impounding or diverting surface or ground water into or out of the CONSERVANCY AREA.
- F. AGRICULTURAL USES.** No plowing, tilling, cultivating, planting, timbering, harvesting, grazing of domestic animals, or other agricultural activities may take place within the CONSERVANCY AREA.
- G. MOTORIZED VEHICLES AND WATERCRAFT PROHIBITED.** There shall be no operation of any motorized vehicle, motorized watercraft, or motorized equipment within the CONSERVANCY AREA, except the State of Wisconsin or any successor owner of the property and their contractors or agents may use motorized vehicles and equipment as required to comply with federal, state, and local laws governing the safety and maintenance of the property or to construct or maintain any features expressed required or allowed by the Mitigation Bank Plan referenced below.
- H. VEGETATION.** There shall be no removal, cutting, mowing or alteration of any vegetation or change in the natural habitat in any manner, except that WisDOT or any successor owner of the property may take such steps as are necessary to comply with all federal, state, and local laws governing the safety and maintenance of the property, including the control of noxious weeds.