

Attorney Christa O. Westerberg  
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May 30, 2017

**VIA E-MAIL ONLY**

Michael Vandersteen, Mayor and Chair  
Sheboygan City Plan Commission  
City Hall  
828 Center Avenue  
Sheboygan, WI 53081

Re: Friends of the Black River Forest's opposition to Kohler Co.'s Annexation Petition  
and Proposed Zoning Map Amendment

Dear Mr. Vandersteen and Members of the City Plan Commission:

This firm represents the Friends of the Black River Forest, a group of citizens living in and around the Town of Wilson and City of Sheboygan who are concerned about the proposed Kohler Co. golf course development in the Town. We write in opposition to the Kohler Co.'s annexation petition for lands in the Town of Wilson and its proposal to amend the City of Sheboygan's zoning map to classify the proposed annexed land as Suburban Residential (SR-5), both being considered by the Plan Commission at its meeting tonight.

First, the Kohler Co.'s proposal to annex and rezone Town of Wilson land into the City of Sheboygan has been extraordinarily rushed, not transparent to the public, and outcome-driven in favor of annexation and rezoning. Records we have obtained indicate the City has been in discussions with Kohler about this project for months, yet the public only became aware after Kohler Co. published its official notice of intent regarding the annexation petition on April 26, 2017. The rezoning request was even more rushed, submitted May 15, 2017. We enclose a letter to the City Attorney for Sheboygan detailing some of our concerns with the City's process. While the City and Kohler Co. have worked together, the citizens are playing catch up and have been deprived of the chance to understand the project and its impacts.

Second, the information you are being provided from City staff is extraordinarily one-sided and assumes a golf course will be constructed on the annexed territory. You are not being well-served with this information, which fails to identify the risks of this project and the significant permitting hurdles it faces. Kohler Co. has only begun to submit its permit applications to appropriate state and federal agencies and faces a challenging process to fill and alter wetlands, among other necessary approvals. For example, an "incomplete" letter sent by DNR to Kohler earlier this year regarding its wetland permit application is attached. Kohler's own self-interested presentations on its proposal at a private location on May 16 and 23 did not provide the public and the Commission with the fair and unbiased information it deserves.

Whether or not state and federal authorities approve necessary permits for the golf course, important and detailed information on the rezoning and annexation proposals remains undisclosed. For example, what will be the costs of services, like water and sewer, that the City will have to provide to the newly annexed land? When will those services be installed, and how will their installation affect current service users and taxpayers? Similarly, what will be the costs of annexation to the Town of Wilson? The public will not hear about these important points until, potentially, the "informational meeting" immediately before the Commission votes on whether to recommend the annexation and rezoning today.

The City's timeline is unreasonable and denies the public of a meaningful opportunity to be heard. The public cannot be expected to provide complete and comprehensive comment at the May 30 hearing. See *Weber v. Town of Saukville*, 209 Wis. 2d 214, 237-38, 562 N.W.2d 412, 421 (1997). Instead, any Plan Commission action on Kohler's petition must be delayed until public disclosure of the proposal is complete and Sheboygan and Wilson residents have received a fair and meaningful public hearing opportunity. Without that opportunity, any action on the Kohler proposal will lack legitimacy, and will also deprive you as commissioners the opportunity to make an informed decision.

Third, the proposed annexation is not in the public interest and does not meet the "rule of reason" standard required by law. An annexation must satisfy three requirements:

- (1) exclusions and irregularities in boundary lines must not be the result of arbitrariness; (2) some reasonable present or demonstrable future need for the annexed property must be shown; and (3) no other factors must exist which would constitute an abuse of discretion on the part of the municipality.

*Town of Menasha v. City of Menasha*, 170 Wis. 2d 181, 189, 488 N.W.2d 104, 108 (Ct. App. 1992). The proposed boundary lines must create an "unexceptional shape." *Id.* at 191. Furthermore, the annexing municipality's "reasonable present or demonstrable future need" is "not satisfied by showing that the territory sought for annexation is merely desirable, better than that already controlled, or that a particular city will best be able to provide service to the territory." *Id.* at 194.

Kohler's unusually-shaped annexation request does not satisfy these standards. Instead, it is a bizarre "balloon on a string," arbitrarily and cynically designed to avoid Town of Wilson scrutiny of the golf course proposal, and not because the City has any demonstrable future need for the land. Also, Wisconsin Department of Administration records show the City Attorney was "directed" to write a letter to the Department and did so on May 22, 2017; the letter strongly lobbied the Department in favor of the annexation. It is unclear who "directed" this effort, and when, again raising concerns about transparency and the City's involvement in this process. Regardless, the annexation is already defective and subject to legal challenge because the Department failed to provide its public interest review within 20 days as required under Wis. Stat. § 66.0217(6)(a).

Fourth, the rezoning is also inconsistent with applicable law and surrounding land uses. Sheboygan Ordinance 15.903(4)(c)(3) requires the Zoning Administrator to consider whether a proposed zoning amendment "maintain[s] the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property."

The land is currently zoned by the Town of Wilson as Park and Recreation (P-1), Residential (R-1), Agricultural (A-2) and Agricultural Transition (A-3). The vast majority of this is Park and Recreation District, the purpose of which is to "provide for areas where the recreational needs of the populace can be met without undue disturbance of natural resources and adjacent uses." (Wilson Ord. 23.01). Although Kohler asserts that its private golf course will "enhanc[e] the lakefront and riverfront," it is directly at odds with the purpose of the current zoning. This area of the Lake Michigan coastline will not in fact be enhanced by the development; its natural character will be destroyed. The proposal will unduly disturb valuable natural resources and be incompatible with its surrounding land uses, not least of which is the popular Kohler-Andrea State Park.

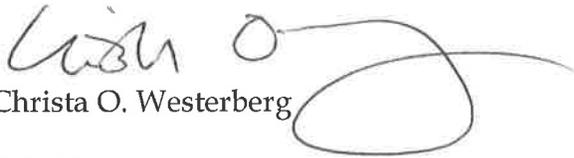
In addition, some of the land is agricultural and agricultural transition, which is meant to "maintain, preserve, and enhance agricultural land historically utilized for crop production" (Wilson Ord. 15.01) and to "defer urban development" and "insure that urban development is compatible with local use plans and policies," among other things (Wilson Ord. 16.01). Conversion to a private golf course and suburban residential housing is entirely inconsistent with preserving open agricultural land from unnecessary development.

At the least, the City should delay consideration of rezoning unless and until the annexation is successful, and unless and until the golf course is approved by state and federal authorities. Then the City may make a more informed choice of zoning designations at that time. The City should also select a zoning designation that requires Kohler Co. to obtain a conditional use permit for the golf course project, to allow it to better address the significant and unique impacts and challenges posed by the golf course project.

In sum, Friends of the Black River Forest respectfully requests that you do not vote to recommend approval of the Kohler Co. annexation and rezoning at your meeting tonight. The process so far has been outcome-oriented in favor of approval, when the fate of the golf course project and legitimate questions about the merits of annexation and rezoning remain. The Commission should table or deny the requests.

Sincerely,

PINES BACH LLP

A handwritten signature in black ink, appearing to read "Christa O. Westerberg", with a large, stylized flourish extending to the right.

Christa O. Westerberg

COW:hmm

Enclosures

cc: Attorney Charles C. Adams  
Sheboygan Plan Commissioners  
FBRF

Attorney Christa O. Westerberg  
cwesterberg@pinesbach.com

May 15, 2017

**VIA EMAIL**Attorney Charles C. Adams  
Sheboygan City Attorney's Office  
City Hall  
828 Center Avenue  
Sheboygan, WI 53081  
[charles.adams@sheboyganwi.gov](mailto:charles.adams@sheboyganwi.gov)Re: *Open Records Request, City of Sheboygan*

Dear Attorney Adams:

Thank you for the City of Sheboygan's prompt response to my April 28, 2017, Open Records request on behalf of Friends of the Black River Forest ("FBRF"). You can expect a check in the requested amount of \$63.20 to pay for copying costs shortly. This letter is to follow up on the City's response, and to raise some questions on the City's closed session regarding this project.

First, the City withheld certain records as drafts and excluded from the definition of "records." It withheld other records as attorney work product and privileged attorney-client communications, and finally, it withheld records under the balancing test due to the active nature of negotiations between the City and Kohler Co. regarding Kohler's sought-after annexation to the City.

While we are unsure of the number of records that were withheld and are concerned about the breadth of the non-disclosure, we did not see any indication that the City attempted to separate information subject to disclosure from information not subject to disclosure, pursuant to Wis. Stat. 19.36(6). We ask that the City do so and release portions of all records that are not privileged. This would include, for example, email communications with substantive portions of the messages redacted as necessary under any authorized and relevant exemptions to disclosure.

Second, the records the City did release indicate the Common Council discussed the proposed Kohler annexation in closed session on April 24, 2017, under agenda item 2.1,

“MOTION TO CONVENE IN CLOSED SESSION under the exemption provided in Sec. 19.85(1)(e) of the Wis. Stats., where competitive and bargaining reasons require a closed session related to a southside development opportunity.” These records also indicate the Common Council was informed about the project and proposed Kohler annexation that night, the potential benefits and obligations of the City, and a “pre-annexation development agreement” that city staff “has negotiated . . . with Kohler.”

The April 24 meeting notice and closed session discussions were unnecessarily opaque and hid not just the contents of negotiations between the City and Kohler, but the fact of those negotiations. The notice used the vague phrase “potential southside development opportunity” rather than “potential annexation of Kohler lands and preannexation agreement,” or other language that would have satisfied the Open Meeting law’s requirement to provide notice of the “subject matter of the meeting, including that intended for consideration at any contemplated closed session.” Wis. Stat. s. 19.84(2). As it was, FBRF had to request records of the closed session to understand the actual subject matter of the Common Council’s meeting.

Further, the records we received indicated the Common Council should have discussed the proposal at least partially in open session. As you know, the exemption to closed session in Wis. Stat. § 19.85(1)(e) is narrow, and only permits secrecy “whenever competitive or bargaining reasons *require* a closed session.” “Developing a negotiation strategy” or deciding on a purchase price are examples of what is intended by this statutory language. *State ex rel. Citizens for Open Government v. City of Milton*, 2007 WI 114, ¶ 19, 300 Wis. 2d 649, 731 N.W.2d 640. However, just because those concerns may be present for some portion of the meeting “does not mean the entirety of the meeting[] fell within the narrow exception under s. 19.85(1)(e).” *Id.*

As reflected by a power point presentation used at the April 24 meeting and other records we received, much of the closed session simply informed the Common Council of the proposal and the discussions to date, and did not concern a potential development strategy. The public was unnecessarily locked out of these discussions, a problem which was compounded by the vague notice. In turn, this makes it more difficult for citizens to contact their alders about the project, including the power point’s dubious statements regarding the project’s positive economic impact and purported “avoidance” of environmental impacts.

For a controversial and quick-moving proposal such as Kohler’s, it is important that the City observe the utmost transparency. While we appreciate the information the City has provided, it only indicates the City could have and should have been doing more. We hope the City will close records and meetings only when absolutely necessary to protect its bargaining position in the future, as the law requires. Similarly, we hope that Kohler’s expected individual contacts with alders – noted on the “Next Steps” page of the power

point presentation— occur in open session, so that citizens understand the basis for the Common Council's eventual decision on the annexation, and to avoid any question of walking quorums. *See State ex rel. Badke v. Village Bd. of Greendale*, 173 Wis. 2d 553, 573, 494 N.W.2d 408 (1993).

Finally, we note the City's discussions with Kohler Co. began in February 2017, if not sooner. We therefore make the following additional request for records under the Open Records law:

- All records of meetings with Kohler Co., its agents, or representatives, relating to the golf course, proposed annexation, and/or extension of city services to the development from January 1, 2017, to the present.
- All correspondence between the City and Kohler Co., its agents, or representatives, relating to the golf course, proposed annexation, and/or extension of city services to the development from January 1, 2017, to the present.

Please be advised that any correspondence requested is intended to include, but is not limited to, correspondence via email (whether stored or contained on public or private email accounts), text message, mobile app, social media, letter, or other formats.

As you know, the Open Records law requires that you respond to this request as soon as practicable and without delay, and to identify all reasons for denial of any part of this request.

If the above-requested records are available electronically, I ask that they be provided in electronic format.

Please let me know if you have any questions about this request, or if the location fee will exceed \$100 prior to responding to this request.

Thank you.

Sincerely,

PINES BACH LLP



Christa O. Westerberg

COW:hmm

cc: City of Sheboygan  
FBRF



April 7, 2017

IP-SE-2017-60-00631

Mr. Jess Barley  
Sr. Staff Project Manager-Hospitality  
Kohler Co.  
444 Highland Drive MS 201  
Kohler WI 53044

Dear Mr. Barley:

Thank you for submitting a wetland permit application to the Department of Natural Resources (department) for Kohler Company's proposed golf course project, Town of Wilson, Sheboygan County. The department reviewed the pending wetland fill permit application (IP-SE-2017-60-00631) and determined additional information is needed to complete the application. Pursuant to Chapter 281.36 (3m) Wis. Stats., the application is incomplete. It is important the application contains clear detailed information and documentation to support how the project meets legal standards. The department must issue a decision supported by the information submitted as part of the wetland fill permit application. The following information is necessary to complete the application:

General

- Describe how the amount of wetland fill was quantified. The application states the preferred alternative directly impacts 3.69 acres of wetland. Identify temporary and permanent impacts. Are temporary construction impacts such as utility installation, tree cutting/clearing and fill to toe of slope included in the 3.69 acres of direct wetland impact? Are the 2.94 acres of tree clearing proposed within the Black River floodplain wetland included in the 3.69 acres?
- Include wetland ID, type, amount and reason for wetland impact in the wetland impact summary table.
- Provide a representative photograph of each wetland area proposed to be impacted. Label each photograph with the wetland ID, amount of impact and reason for impact.
- Provide a detailed tree clearing plan for tree removal in wetland. Explain why forested wetland clearing is needed and what has been done to avoid and minimize tree clearing. Include time of year trees will be cleared, method of cutting/clearing, equipment to be used, whether stumps will be removed and if trees will be chipped or stockpiled. Describe ground disturbance, measures such as temporary construction mats that may be used and restoration and long-term maintenance of the area.
- Provide a forest management plan for the overall site. Include specifics of overall tree removal and evaluate secondary impacts to wetlands (i.e. invasive species, change in hydrology, etc) due to tree removal.
- Provide a detailed restoration plan for any area of temporary wetland impact.
- Provide a vegetative buffer planting plan. Include the location of buffers, dimensions, timing of installation, planting plan (species name and planting rate) and long term maintenance plan for the proposed vegetative buffer strip adjacent to wetlands. It appears the buffer strip in some cases increases the wetland impacts. Buffer strips in wetland should be removed.

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- Describe the soils present and their suitability to support directional drilling of utilities. Provide a plan for addressing hydraulic fluid that is lost (fractures or frac out) during directional drilling of utilities. Include anti-seep collars to prevent lateral drainage of wetland.
- Provide details and description of any proposed modifications or additions to the existing entrance road bridge, including, but not limited to guardrails, riprap, tie ins, etc.
- Provide full size grading plan sheets scaled no more than 1:40 feet for the entire project area. Include existing and proposed grades, wetland ID, wetland boundaries and wetland impacts for the preferred alternative. The plan sheets should have the same scale and include a key that clearly identifies all features. The plan shall clearly show existing surface water flow and proposed surface water flow in order to evaluate secondary impacts to wetlands based on a change in surface water flow.
- Provide details of the proposed storm sewers located throughout the proposed golf course including size, location and design of the outlets. Discuss the purpose of the storm sewers. Assess if the storm sewers alter the hydrology of remaining wetland (remove water from one area and add to another area)?
- Provide a detailed erosion control plan and stormwater management plan that meets the requirements of NR 151 and NR 216. Provide an assessment of potential secondary impacts due to stormwater management and construction techniques.
  - The erosion control plan shall include measures to avoid wetland impacts during construction. The plan shall include, but is not limited to, identifying clearing and grubbing limits, details of construction phasing, details of construction site stormwater practices, establishing and maintaining wetland buffers, etc.
  - The submitted stormwater management plan infiltrates a large volume of water into an area with potential shallow groundwater. Provide an assessment of potential groundwater mounding and function of infiltration practices in close proximity to groundwater. Provide further details of the design of all stormwater features. Provide details on how runoff from parking lots will be pretreated for oils prior to infiltration. Provide groundwater monitoring forms if wells are present pursuant to NR 141. Include details for both the Kohler owned property as well as the state owned property.
- Provide a nutrient management plan and pesticide management plan. The application included a general narrative description of the integrated pest and nutrient management plan and indicated an integrated pest management (IPM) plan will be developed. This plan must be reviewed as part of the wetland fill application to evaluate potential impacts nutrient and pest management may have on the remaining wetlands and their functions.
- Provide additional irrigation pond information. Verify the pond cross section drawing and location and scale. Assess temporary dewatering for pond construction and impacts on nearby wetland. Discuss if ground water elevation monitoring would be useful during construction to make sure wetlands are not impacted during construction of the pond.
- Verify fill will not be imported for the project. If fill is imported, provide information on where fill will be obtained. The borrow site is considered part of the overall project and must be reviewed for compliance with cultural resources and threatened and endangered resources.
- Provide a site specific water table map for the shallow aquifer to determine groundwater flow path in relation to the wetlands. Evaluate secondary impacts to shallow groundwater and adjacent wetlands (drying them out/flooding them).
- Provide site specific details of each wetland bridge crossing. Include plan, profile and cross sections. The plan should include location of wetland, elevation, size of pilings, distance between pilings and height above land surface.
- Provide documentation the project complies with applicable cultural resource protection requirements.

- Provide all requested information listed in the Endangered Resources Review for the golf course project site (ER Log #17-180) and mitigation site (ER Log #17-181). Also provide any additional information (e.g., reports, data, survey results) on rare or common wildlife species, plant species or natural communities that may be present on the project sites.
- Describe how wetland will be protected during normal golf operations and possible future large spectator events.

### Practicable Alternatives Analysis (PAA)

As stated during the February 28, 2017 pre-application meeting, the basic project purpose is golf course development. The PAA must explain and document why other course layouts are not practicable, including those layouts with smaller footprints and different designs. Ch. 281.36 (1)(cp) defines practicable as reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project. It is important to provide quantifiable information for the department to objectively review the PAA. The PAA must be revised to include the following:

- Explain and document other properties as alternatives. Include siting criteria, map of properties that meet the criteria and why the properties were rejected. Include sites not owned by Kohler and not currently for sale.
- Document where design criteria on page 6 of the narrative were derived. All of the criteria related to the type of course proposed need to be explained, documented and quantified. For example, what does “short walking distance from green to next tee”, “each hole a private playing experience” and “practice range and various tees located in close proximity to clubhouse” mean? The criteria proposed should be based on quantifiable information to demonstrate why they cannot be varied.
- What is the course length of the preferred alternative?
- Label which holes are Par 3, Par 4 and Par 5.
- Document alternatives that include reducing the footprint of the project and re-configuring the layout to avoid and minimize wetland impact. Alternatives must include, but are not limited to:
  - Swapping location of pars, minimizing the dimensions of fairways by reducing the distance between tee box and green or by reducing the width of the fairways, reducing the footprint of the proposed pond, driving range, parking lot and clubhouse, reducing road widths and road side slopes.
  - Provide documentation on the need for the size, layout, location, number of seats, etc. for the clubhouse. Can the clubhouse be taller or have a basement to accommodate additional space?
  - Provide documentation for the size, location number of parking spots for the parking area and size and location for golf cart storage. Can golf carts be stored in a different location?
  - Explore alternatives which would reduce and/or eliminate the footprint of the proposed irrigation pond. Alternatives should include, but are not limited to, low water use golf course design, alternative water storage (i.e. underground or above ground storage), alternative pond layouts, alternative pond designs which incorporate other measures to address water level consistency and water clarity.
- Revised PAA to include an alternatives analysis for each individual area of wetland impact. There appear to be a substantial number of wetland impacts that are small in size near amenities that could be modified to avoid or minimize wetland impact. The analysis must document the need

for the proposed impact and explore alternatives to avoid and minimize impact. For example, the alternatives analysis for impacts to wetland P75 should document why the T box cannot be smaller or reconfigured to avoid the wetland.

### Wetland Mitigation

- The wetland mitigation plan submitted is conceptual only. For a permittee-responsible mitigation project, a complete Compensation Site Plan (CSP) must be submitted, as detailed in the attached document titled “Appendix E. Compensation Site Plan (CSP) Outline”, taken from the Guidelines for Wetland Compensatory Mitigation in Wisconsin, version 1. The CSP will require the collection of additional site baseline information of the proposed permittee-responsible mitigation site before the CSP can be prepared, including a wetland delineation, Wisconsin Rapid Assessment Methodology (WRAM) functional values assessment of any existing wetlands, soils investigation to determine the extent of hydric versus upland soils, and baseline groundwater monitoring.
- More information is needed to determine whether or not the proposed mitigation site can generate enough mitigation credits to satisfy the mitigation requirement. If it is later determined that it cannot, additional mitigation measures will be necessary.
- Prior to preparing the CSP, the following issues will need to be resolved:
  - It is still in question whether or not the mitigation site can be used for mitigation purposes given that it was purchased with the help of Knowles-Nelson Stewardship grant funds and that there is an existing conservation easement on the lands granted to the Glacial Lakes Conservancy from Sheboygan County.
  - The DNR (and Army Corps of Engineers) will need to conduct a site visit to the proposed mitigation site to determine if the agencies feel the site has the potential to be a successful mitigation project.

At this time the wetland fill application is considered incomplete. Please submit the requested information as soon as possible to continue with the application process. The Department reserves the right to request clarifying information on the additional information requested. The Department will schedule field time to conduct the Wetland Rapid Assessment Methodology (WRAM) when the application is considered complete.

Please continue to work with the Town of Wilson and Sheboygan County to ensure compliance with floodplain and zoning requirements. If you have any questions about this letter, please call me at (262) 574-2137 or email Geri.Radermacher@wisconsin.gov.

Sincerely,



Geri Radermacher  
Water Management Specialist

Cc: John Ehmann, Town of Wilson  
Adam Payne, Sheboygan County  
Todd Vesperman, Jessica Kempke, USACE  
Pam Schense, Michelle Hase, Brooke Robinson, Michelle Scott, Pam Biersach, Mike Thompson,  
Rori Paloski, DNR

## Appendix E. COMPENSATION SITE PLAN (CSP) OUTLINE

(Additional or different information may be required by agencies on a project-by-project basis)

All proposed permittee-responsible compensatory mitigation plans and mitigation banks must include a discussion of the following items. A compensatory mitigation plan cannot be approved by the permitting agencies until the following items are included. Please provide the following information and a completed copy of this checklist with the submittal of a compensation site plan (CSP):

**I. Executive Summary:** ONE PAGE summary of the proposed site plan containing the following information:

- Site name
- Location of compensation site: County, Basin, BSA, ¼ ¼, Section, Township, Range, Latitude/Longitude.
- Is this a bank site? If yes, name of bank sponsor
- Is this project specific? If yes, this is compensation for which project (include permit numbers)?
- General description of design concept for the compensation site.
- Details of upland buffers. Include surrounding land-uses.
- Restoration work planned in buffer zone.
- Planned hydrology (include expected water depth).
- Planned construction date.

Compensation Site Wetland Type	Acres Impacted (for P-R sites)	Acres Restored or Enhanced	Acres Created	Acres Preserved
Shallow or Open Water				
Marshes				
Sedge Meadows				
Fresh (Wet) Meadows				
Wet to Wet-Mesic Prairies				
Fens				
Bogs				
Shrub Swamps				
Wooded Swamps				
Floodplain Forests				
Seasonally Flooded Basins				
<b>Totals</b>				

**II. Introduction and Purpose:** Identify the development project for which the compensation effort is required. State if the plan is for development of a bank site or a permittee-responsible site. Provide the projected start and end dates for construction of the development project and the compensation site.

**III. Identify Plan Developers and Expertise:** In order to develop a high quality wetland compensation project, a significant level of professional expertise and experience is required. Depending on the complexity of the selected site, a team of experts may be required for planning, design, construction, inspection, monitoring, and maintenance. This interdisciplinary team may include plant ecologists, hydrologists, soil scientists, hydrogeologists, contractors, engineers, and wildlife biologists. The CSP should list the personnel working on the project and include reference to past projects and qualifications. Provide the names and professional experience information for the personnel responsible for investigating the proposed site and preparing the site plan, construction plans, and specifications.

**IV. Site Selection:** A description of the factors considered during the site selection process. This should include consideration of the watershed needs, on-site alternatives where applicable and the practicability of accomplishing ecologically self-sustaining wetland restoration, establishment, enhancement, and/or preservation at the compensatory mitigation site. Explain why the proposed site was chosen of all the site alternatives considered. Provide the detailed site location by County, Township, Range, and Quarter-Quarter section. Locate the site on the USGS 1:24,000 quadrangle map.

**V. Mitigation Objectives:** A description of the wetland type(s) and acres that will be restored, created, enhanced and/or preserved. A discussion of the wetland functions and services and how these functions and services address the needs of the watershed. The watershed approach shall be implemented according state and federal law and Chapter 2.C.

**VI. Baseline Information:** A description of the ecological characteristics of the proposed compensatory mitigation site and, in the case of an application for a federal or state required permit, the impact site. This should include descriptions of historic and existing conditions and other site characteristics appropriate to the wetland resource proposed as compensation.

- survey of current contours;
- summary of historic and current on-site land uses;
- description of current zoning designations;
- description of nearby land uses;
- description of any known historic/archeological resources on the site;
- assessment of the geology and soils on site using the county soil survey and some representative borings;
- description of current hydrology including channelized and un-channelized flows, groundwater, and tiling information;
- description of the present flora;
- description of fauna using the site;
- NRCS and WWI mapping of the site;
- wetland delineation in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and any applicable Regional Supplement(if wetland currently exists on the site);

- wetland functions and services assessment of any wetlands existing on the site;
- floodplain mapping of the site;
- description of any state navigable waters on or near the site;
- description of the site in context of other wetlands, wildlife habitat, and natural areas (corridor concepts); and
- NHI search results.

**VII. Site Map:** The site map should be at a scale of 1 inch = 400 feet and should show 1 foot contours. A map should also be provided showing a clear outline of the property boundaries, showing the boundaries of all current and proposed vegetative communities, and any other pertinent current or proposed land features.

**VIII. Mitigation Work Plan:** Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as plan form geometry, channel form (e.g., typical channel cross-section), watershed size, design discharge, and wetland area plantings.

**IX. Determination of Credits:** A description of the number of credits to be provided, including a brief explanation of the rationale for this determination (wetland assessment method). For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project will provide the required compensation for the unavoidable impacts to aquatic resources resulting from the permitted activity.

**X. Performance Standards:** Ecologically-based standards (hydrology, plant survival, species composition, habitat features, etc.) that will be used to determine whether the compensatory mitigation project is achieving its objectives. Performance standards are a list of quantifiable objectives that must be met so that the project can be objectively evaluated to determine if the site is developing in to the desired resource type, providing the expected functions and services, and attaining any other applicable metric. Specific requirements and additional guidance for performance standards can be provided by permitting agencies upon request but are often set on a case-by-case basis.

**XI. Monitoring Requirements:** Provide a description of the parameters to be monitored, a description of the monitoring methods, and a monitoring schedule. The site attributes to be monitored and level of monitoring effort proposed should be sufficient to determine if the compensatory mitigation project is on track to meet the performance standards and provide the functional improvements described in the site

objectives. Monitoring will also indicate need for corrective actions and trigger points for management activities; therefore, the monitoring plan should also have provisions for determining whether adaptive management is needed at various points throughout the monitoring period and provide alternatives as discussed in the adaptive management plan. A schedule for reporting monitoring results to the permitting agencies must also be included. Specific requirements and guidance on site monitoring can be provided by permitting agencies upon request but are often set on a case-by-case basis.

- XII. Maintenance Plan:** A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
- XIII. Long-Term Management Plan:** Descriptions of how the compensatory mitigation project will be managed after performance standards are achieved to ensure the long-term sustainability of the resource. The party responsible for the long-term management must be identified. In addition, if the nature of the long-term management proposed is sufficient to warrant funding dedicated to that task, a long-term financing mechanism must also be identified.
- XIV. Adaptive Management Plan<sup>70</sup>:** This plan should address strategies to address unforeseen issues associated with site conditions or other components of the compensatory mitigation plan. This plan will guide decisions for revising the original construction plan and implement measures to address both foreseeable and unforeseen circumstances that could adversely affect the success of the compensatory mitigation project. The plan must identify the party or parties responsible for implementing the adaptive management plan.
- XV. Implementation Schedule:** Provide details on timelines for the construction work, plantings, inspections, and follow-up monitoring. Identify other permits that may be required for the construction work. Except for cases involving after-the-fact permits, construction of the compensation site must occur before or at the same time as construction of the development project.
- XVI. Site Protection Instrument:** A description of the legal arrangements and documents including verification of site ownership used to ensure the long-term protection of the compensatory mitigation site. Contact the permitting agencies for appropriate templates of conservation easements or comparable legal instruments.
- XVII. Financial Assurances:** A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed and managed for the long-term, in accordance with the required ecological performance standard. The financial assurance can be in the form of performance bonds, escrow accounts, or other appropriate instruments approved by the permitting agencies. For government agencies or a public authority, permitting agencies may accept a formal, documented

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<sup>70</sup> Chapter NR 350.09(4), Wisconsin Administrative Code

commitment to funding the project or bank program as an acceptable assurance on a case-by-case basis (*e.g.*, documentation that funds allocated by a legislature or from bonding are encumbered for a specific project). Contact the permitting agencies for appropriate templates of acceptable financial assurances.