

MOWERY WETLAND MITIGATION BANK
MITIGATION BANKING INSTRUMENT

This Mitigation Banking Instrument (“MBI”) is entered into among the North Coast Regional Council of Park Districts (“NCRCPD”) and the regulatory and resource agencies signatory hereto.

RECITALS

A. The NCRCPD was organized in 1998 to plan, develop and promote the restoration and enhancement of wetlands and streams throughout its region and has developed a regional mitigation bank known as the North Coast Regional Mitigation Bank (the “Regional Mitigation Bank”) containing wetland mitigation sites in Sandusky, Erie, Lorain and Medina counties.

B. Since its authorization on December 27, 2001, the NCRCPD has established and operated wetland mitigation banking sites in Sandusky County (White Star Park, White Star Expansion Area, White Star III, Blue Heron Reserve), Erie County (Castalia Quarry, Edison Woods Preserve), Lorain County (Carlisle Reservation, Carlisle Reservation Hale Road, Wellington Reservoir) and Medina County (Letha House). Pending regional mitigation banking sites are located in Wood County (Reuthinger Wetland) and Lorain County (Indian Hollow).

C. The NCRCPD has identified a ±137 acre wetland mitigation bank site in Russia Township, Lorain County, Ohio (the Mowery Wetland Mitigation Bank site) owned by the Lorain County Metropolitan Park District (LCMP). The Mowery Wetland Mitigation Bank site has the potential to reestablish approximately 30 acres of wetland as more fully described in the Plan for the Mowery Wetland Mitigation Bank, revised July 7, 2014 and prepared in accordance with the *Final Federal Compensatory Mitigation Rule* (33 CFR Parts 320-332; also referred to as the Federal Compensatory Mitigation Rule). The NCRCPD will reestablish, rehabilitate and manage the wetlands at the Mowery Wetland Mitigation Bank site in accordance with the Plan and this MBI until long-term management of the site is assumed by LCMP.

D. The Buffalo District of the Army Corps of Engineers (the “COE” or “District Engineer”) has assembled an Interagency Review Team (“IRT”) pursuant to the procedures of the Federal Compensatory Mitigation Rule, which has reviewed the Plan and concurs with the objectives and the administration of the Mowery Wetland Mitigation Bank as evidenced by the execution of this MBI.

NOW, THEREFORE, the NCRCPD, the Buffalo District of the United States Army Corps of Engineers, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Natural Resources Conservation Service, the Ohio Environmental Protection Agency, and the Ohio Department of Natural Resources agree to the following terms and conditions for the establishment and operation of the Mowery Wetland Mitigation Bank.

PROVISIONS

1. Establishment of the NCRCPD Mowery Wetland Mitigation Bank

The NCRCPD submitted to the IRT its *Plan for the Mowery Wetland Mitigation Bank, Department of Army Application No. 2012-00661*, dated May 4, 2012, revised July 7, 2014, (hereinafter referred to as the “Plan”). The IRT has reviewed and approved the Plan, which is incorporated herein by reference. The

Plan includes a description of the goals and objectives of the Mowery Wetland Mitigation Bank, identification of ownership of the mitigation site in Lorain County, a description of the physical characteristics of the mitigation site and baseline conditions of the mitigation site, a detailed plan and specifications for the wetland reestablishment and rehabilitation, a description of the plan to integrate the mitigation site into the park system of LCMP, performance standards, service area, standards for operation of the Mowery Wetland Mitigation Bank including credit accounting procedures, reporting protocols, monitoring plan, provisions for management and maintenance of the mitigation site, and a discussion of other relevant terms for the establishment and operation of the Mowery Wetland Mitigation Bank. The Plan is incorporated herein and is a fully enforceable part of this MBI.

2. Regulatory Authorities

The establishment and operation of the Mowery Wetland Mitigation Bank will be in accordance with the following federal and state authorities:

- Clean Water Act (33 USC §1251 et seq.)
- Rivers and Harbors Act of 1899, Sections 9/10 (33 USC §403 et seq.)
- Final Federal Compensatory Mitigation Rule (hereinafter Compensatory Mitigation Rule) (33 CFR Parts 320-332)
- National Environmental Policy Act (42 USC §4321 et seq.)
- Endangered Species Act (16 USC §1531 et seq.)
- Fish and Wildlife Coordination Act (16 USC §661 et seq.)
- Food Security Act of 1985, as amended (16 USC §3801 et seq.)
- National Historic Preservation Act, Section 106 (16 USC §470 et seq.)
- Ohio Revised Code, Chapter 6111
- SB 294, effective September 5, 2012
- Ohio Administrative Code, Chapter 3745-1

3. Provision of Legal Responsibility

The legal responsibility for providing compensatory mitigation lies with the permittee until the permittee purchases credits under the terms of this MBI and the procedures of NCRCPD. The NCRCPD agrees to assume all legal responsibility for satisfying all of the mitigation requirements of the permit for which the fees have been accepted; that is, the implementation, performance and long-term management of the compensatory mitigation project approved under this MBI. This responsibility includes compliance with the Compensatory Mitigation Rule and any other applicable federal, state or local laws. In satisfaction of the compensatory mitigation requirement, NCRCPD will provide compensatory mitigation of the type and amount specified in the permit. Any transfer of mitigation responsibility from the permittee to NCRCPD is conditioned upon the prior approval by NCRCPD and the permitting agency, which in most cases will be the Corps of Engineers (Corps, District Engineer or COE) and/or the Ohio Environmental Protection Agency (OEPA).

The transfer of liability from the permittee to NCRCPD is established by (a) approval of this MBI; and (b) the transfer of credit fees from the permittee to NCRCPD.

4. Criteria for Use of the Mowery Wetland Mitigation Bank

In accordance with the *Final Federal Compensatory Mitigation Rule* (33 CFR Parts 320-332), all activities regulated under Section 10 of the Rivers and Harbors Act of 1899 and Sections 401 and 404 of the Clean Water Act may mitigate for unavoidable impacts to wetlands at the Mowery Wetland Mitigation Bank on a project specific basis. The Mowery Wetland Mitigation Bank may also be used to compensate for environmental impacts authorized under other programs, such as state or local wetland regulatory programs, enforcement actions or supplemental environmental projects, Ohio's isolated wetland statute and rules, the NPDES program, Army Corps of Engineers civil works projects, the wetland conservation provisions of the Food Security Act of 1985 and Superfund removal and remedial actions, on a project specific basis.

Entities which propose to mitigate for wetland impacts shall submit a permit application, pre-activity notice or preconstruction notification to the COE and/or the OEPA and all other appropriate federal, state and/or local regulatory agencies. The COE and/or the OEPA will evaluate whether the proposed mitigation at the Mowery Wetland Mitigation Bank meets all relevant statutory and/or regulatory requirements. A permit applicant's purchase of credits in the Mowery Wetland Mitigation Bank does not diminish a permit applicant's responsibility to comply with applicable federal, state or local laws. If the proposed activity and mitigation are approved, the COE and/or OEPA may condition the permit(s) on the applicant's submittal of an executed Mitigation Agreement, a sample of which is found in the Appendices to the Plan.

5. Geographic Limits of Applicability/Service Area

The Mowery Wetland Mitigation Bank is located in United States Geological Survey (USGS) Hydrologic Unit (HUC) #04110001, the Black/Rocky River (Hydrologic Unit Map, State of Ohio, USGS, 1988). A USGS watershed location map is found at Figure 2 in the Plan for the Mowery Wetland Mitigation Bank.

The geographic service area for the Mowery Wetland Mitigation Bank includes the entire 8-digit HUC #04110001, in which the mitigation bank site is located. In accordance with IRT guidelines and state laws and rules, the service area for impacts to Category 1 wetlands and for impacts to 0.5 acres or less of Category 2 isolated wetlands includes the Ohio portion of the regulatory boundaries of the Buffalo District of the Corps of Engineers, consequently, mitigation for impacts to wetlands of the referenced size and quality can be located at the Mowery Wetland Mitigation Bank. (See the Ohio regulatory authorities cited above for a determination of wetland categories.)

A secondary service area includes the remainder of the 6-digit HUC watershed in which the primary service area occurs (041100, Southern Lake Erie). Use of a secondary service area for compensatory mitigation may be approved by the regulatory agencies on a project specific basis, if such mitigation is consistent with the considerations set forth in §332.3(b) of the Federal Compensatory Mitigation Rule including the watershed approach and, if applicable, state laws and rules.

The Mowery Wetland Mitigation Bank service area is consistent with the Federal Compensatory Mitigation Rule (§332.8), Ohio's wetland water quality rules and isolated wetland statutory provisions, and is appropriately sized to compensate for wetland impacts within the watershed units served.

The location of compensatory mitigation for unavoidable wetland impacts is subject to project specific state and federal regulatory approval. The Corps of Engineers and/or the OEPA will consider, on a

project specific basis, the use of the Mowery Wetland Mitigation Bank as compensatory mitigation for wetland impacts outside of the identified geographic service area.

6. Timing of Credit Withdrawal

Upon approval of this MBI and recording of the long-term site protection instrument, the NCRCPD is authorized to sell credits in accordance with the schedule described in the Plan. The NCRCPD may sell thirty percent (30%) of the anticipated reestablishment mitigation credits prior to site restoration; provided, however, that implementation of the plan for the mitigation site must be initiated within one full growing season from the date of the sale of the first credit. Subsequent credits may be sold as milestones are achieved in accordance with the credit release schedule described in the Plan, however, a minimum of 25% of the reestablishment credits must be held back until all performance standards are achieved. All credit releases must be approved by the District Engineer, in consultation with the IRT.

The District Engineer in consultation with the IRT will conduct a final compliance inspection to verify the final wetland delineation, confirm that all performance standards have been achieved and authorize the final release of credits based on the verified final wetland delineation.

7. Determination of Wetland Credits

Wetland credits are determined by the District Engineer in consultation with the IRT in accordance with §332.8(o) of the Federal Compensatory Mitigation Rule. For wetlands, whole or partial acres are the unit of measure used to determine credits, with one credit equivalent to one acre of reestablished wetland and one credit equivalent to two acres of rehabilitated wetland. In accordance with §332.8(o), the number of credits must reflect the difference between pre- and post-compensatory project site conditions, as determined by a functional or condition assessment or other suitable metric. Interim and final quantification of wetland acres will be based on comprehensive wetland delineations determined under the COE's 1987 Wetland Delineation Manual and Regional Supplements and submitted with or prior to credit release requests.

As indicated in Table 2 of the Plan, wetland credits are anticipated to be generated by reestablishment of wetlands. Criteria for the release of the anticipated credits are described in the Plan.

Mitigation ratios for entities that propose to use the Mowery Wetland Mitigation Bank will be determined by the COE and/or OEPA on a project specific basis; ratios are expected to range from 1.5:1 to 3:1, depending on the location, resource class/category and assessment of impacted wetlands. As provided by §332.3(f)(2), the COE "must require a mitigation ratio greater than 1:1 where necessary to account for the method of compensatory mitigation (e.g., preservation), the likelihood of success, differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project, temporal losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions and/or the distance between the affected aquatic resource and the compensation site."

8. Crediting/Debiting/Accounting Procedures

The NCRCPD will maintain an accounting of acres/credits of wetlands generated and sold (in whole tenths of an acre) in connection with implementation of the Mowery Wetland Mitigation Bank Plan as

described therein. The credits will be debited when an applicant's proposed wetland mitigation is approved by the COE, OEPA or other regulatory agency. The credit ledger report summarizing debits and remaining credits will be provided by the NCRCPD to the COE annually. Email confirmations of debit transactions will be copied to the COE's RIBITs coordinator and the OEPA's mitigation compliance section within thirty (30) days of acceptance of credit fees from the permit applicant.

The ledger will include the name of the permit applicant, permit number, as applicable, the permitted impacts for each wetland type (forested or nonforested) specified in the permit or Mitigation Agreement, credit additions and subtractions specified by resource class (Section 404 or isolated).

9. Long-Term Management and Protection

The Lorain County Metropolitan Park District is a member district of the NCRCPD and owns in fee simple the Mowery Wetland Mitigation Bank site. The NCRCPD will manage and fund the implementation of the Plan, the monitoring pursuant to the Plan, and the implementation of any necessary remedial activities. Upon closure of all or part of the mitigation bank site in accordance with the provisions of this MBI, responsibility for the long-term management, maintenance and protection of the site will be assumed by LCMP. The park district will manage and protect the mitigation site, in perpetuity, consistent with the terms of the MBI and the site protection instrument. The mitigation bank site will be included in the park system of LCMP with trail/bike path linkages to other park facilities, as appropriate, and environmental education opportunities and programs.

The proposed long-term site protection instrument for the Mowery Wetland Bank site is found in the appendices to the Plan. Following approval of the MBI and prior to the sale of any mitigation credits, the long-term site protection instrument will be recorded in the deed or official records of the Lorain County Recorder and a recorded copy provided to the District Engineer.

10. Monitoring Requirements, Performance Standards and Remedial Action

The NCRCPD will conduct monitoring in accordance with the monitoring methodology, parameters, performance standards and reporting deadlines and requirements set forth in the Mowery Wetland Mitigation Bank Plan. The monitoring reports will identify the extent to which the mitigation site is meeting the performance standards set forth in the Plan and if additional measures are necessary to ensure that the mitigation site will meet the performance standards.

If the COE, in consultation with the IRT, determines that the mitigation site (or any portion thereof) fails to meet the relevant performance standards, the NCRCPD will implement necessary remedial measures to correct the deficiencies. The COE will notify the NCRCPD in writing with reasonable specificity of the deficiencies to be remediated and provide a reasonable period of time to implement the remedial measures.

11. Financial Assurances

Based on the information presented in the Plan and to the IRT, the parties hereto agree that proper reestablishment and rehabilitation of the mitigation site in the Mowery Wetland Mitigation Bank and management of the mitigation site by LCMP as part of its county park system will result in high level of confidence that the mitigation banking site will be successfully completed in accordance with its performance standards. The NCRCPD and its member districts have proven records as natural resource

public management agencies, with experience in the restoration and maintenance of habitat complexes. Therefore, financial assurances in the form of a performance bond, casualty insurance, letter of credit, escrow account or the like will not be required. Financial assurances will be provided by contingency funds established in the adopted budget for the mitigation banking site. In addition, performance bonds will be required of contractors in accordance with the policies of the NCRCPD and applicable requirements for public construction projects.

For each acre of mitigation credit sold at the Mowery Wetland Mitigation Bank, a minimum of \$1000 will be allocated to the contingency fund to be used only for remedial activities necessary to implement the mitigation plan or meet the terms of this MBI. These funds shall cumulate in the contingency fund and may be used for other purposes only after attainment of all performance standards.

12. Other Provisions

Default. Should the District Engineer determine that the North Coast Regional Council of Park Districts is in material default of any provision of this MBI or the Plan, the District Engineer may take appropriate action (33 CFR §332.8(o)(10)). The District Engineer, in consultation with the IRT, will notify the NCRCPD in writing with reasonable specificity of the circumstances or actions which constitute a material default and provide a reasonable period of time to cure the default. If the NCRCPD fails to cure the default, the District Engineer will inform NCRCPD in writing of the action to be taken. Such actions may include, but are not limited to, suspending credit sales, adaptive management, using contingency funds, decreasing available credits, directing the use of contingency funds to purchase mitigation credits from an approved mitigation bank in the service area or another service area (which will result in a reduction of said mitigation liability to the NCRCPD), directing the use of contingency funds to a designee to cure said default, taking enforcement action or terminating this MBI.

Assignment. The NCRCPD may transfer or assign its rights and obligations under this MBI provided that such assignment or transfer is consistent with the Federal Compensatory Mitigation Rule and approved by the District Engineer in consultation with the IRT. The selection of the assignee will be made by the Board of Directors of the North Coast Regional Council of Park Districts. Assignment of any rights and obligations under this MBI, including long term management obligations for the mitigation banking site, will include a transfer or other disbursement of the long term management funds/account for such site.

Dispute Resolution. Resolution of disputes among members of the IRT and the District Engineer concerning this MBI will follow the procedures set forth in §332.8(e) of the Compensatory Mitigation Rule. Disputes regarding this MBI, the compensatory mitigation Plan, or policy will be resolved between NCRCPD and the District Engineer in consultation with the IRT.

Notice. Any notice required or permitted hereunder will be deemed to have been given either (i) when delivered by hand or transmitted by electronic mail or facsimile transmission, (ii) three (3) business days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, or (iii) sent by express or next-day nationwide delivery service, addressed as follows (or addressed in such other manner as the party being notified will have requested by written notice to the other party):

District Engineer
US Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, NY 14207

President
North Coast Regional Council of Park Districts
12882 Diagonal Road
LaGrange, OH 44050

Invalid Provision. In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not

affect any other provisions hereof, and this MBI will be construed as if such invalid, illegal or unenforceable provision had not been included herein.

Rules of Convenience. For convenience, any masculine pronouns used in this MBI include the feminine and neuter pronouns and the singular tense includes the plural tense. Any paragraph headings or captions contained in this MBI are for convenience only and are not intended by the parties to affect the meaning or interpretation of any provision of this MBI.

Effective Date. This MBI will be immediately binding upon the North Coast Regional Council of Park Districts and its successors and assigns upon signing by NCRCPD and the District Engineer whether or not executed by other members of the IRT.

MBI Closure. Either the District Engineer or NCRCPD may terminate this MBI on sixty (60) days written notification to the other party. In the event this MBI is terminated, NCRCPD or its assignee, as appropriate, is responsible for fulfilling any remaining obligations for credits sold prior to termination. Such obligations include the successful completion of the ongoing compensatory mitigation project, relevant maintenance, monitoring, reporting, and long term management requirements.

Mitigation Bank Closure. All or part of the Mowery Wetland Mitigation Bank site can be closed in accordance with the procedures set forth in this MBI. Closed projects will be certified as such by the District Engineer in consultation with the IRT. Closure certification will be requested by the NCRCPD once performance standards have been achieved, the minimum monitoring requirements have been completed and all credits associated with the mitigation bank site have been sold or abandoned. The closing procedures will also include confirmation that LCMP, through action of its board, has integrated management and maintenance of the Mowery Wetland Mitigation Bank into its park management plan; that the NCRCPD has transferred the remaining funds in the long term management budget account/fund to a dedicated or other appropriate fund; and such other steps as may be mutually agreed by the NRCPCD and the District Engineer.

Liability of Regulatory Agencies. The District Engineer and signing members of the IRT administer their regulatory programs to protect wetlands and waterways in the public interest, and not to guarantee the availability of credits to any entity or ensure the financial success of the mitigation bank, specific individuals or entities. The public should not construe this MBI as a guarantee in any way that the District Engineer will approve the sale of credits from this MBI, or that the regulatory agencies will forgo other mitigation options that may also serve the public interest.

Responsibility of Regulatory Agencies. Whenever NCRCPD is required to obtain the approval of the District Engineer or the signing members of the IRT, such approval will be requested in writing. The District Engineer will coordinate review with the IRT and will not unreasonably condition, delay or withhold action on such request. The District Engineer or signing members of the IRT will approve or withhold approval in writing within one hundred twenty (120) days after receipt of NCRCPD's complete request therefor. When approval is withheld, the District Engineer will notify the NCRCPD in writing with reasonable specificity of the reasons approval was withheld and the conditions, if any, on which approval might otherwise be given.

Right to Refuse Service. The District Engineer's or the OEPA's approval, as applicable, of the purchase of credits or the transfer of funds from another source of third-party mitigation does not signify the NCRCPD's acceptance or confirm the NCRCPD's offer to sell credits. The North Coast Regional Council of Park Districts reserves the right to refuse to accept the transfer of funds or to sell credits from this MBI for any reason.

Modifications. This MBI may not be modified or amended except by written agreement between NCRCPD, the District Engineer and, as applicable, the OEPA, following the modification procedures set forth in §332.8(g)(1) of the Compensatory Mitigation Rule. The modification procedures will be used to expand the size or service area of a previously approved mitigation Plan and add a different type of resource credit to a previously approved mitigation Plan. The streamlined modification procedures set forth in §332.8(g)(2) may be used for MBI modifications involving adaptive management, credit releases, changes in credit release schedules, and changes that the District Engineer determines are not significant.

Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same MBI.

Third Party Rights. This MBI shall not create any rights, claims, or causes of action for any entities other than the parties hereto.

NORTH COAST REGIONAL COUNCIL OF PARK DISTRICTS

By: _____

Its: _____

Date: _____

ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT

By: _____

Its: _____

Date: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____

Its: _____

Date: _____

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

Its: _____

Date: _____

NATURAL RESOURCES CONSERVATION SERVICE

By: _____

Its: _____

Date: _____

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: _____

Its: _____

Date: _____

OHIO DEPARTMENT OF NATURAL RESOURCES

By: _____

Its: _____

Date: _____