



CITY of NOVI CITY COUNCIL

Agenda Item L February 25, 2019

SUBJECT: Approval to enter into an agreement to purchase 0.30 Acres of emergent wetland credits for the ITC Corridor Regional Trail Phase 2 project from the Huron River Watershed Wetland Mitigation Bank (Capernall Farm) in the amount of \$33,000.

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division
Parks, Recreational and Cultural Services

CITY MANAGER APPROVAL: *[Signature]*

EXPENDITURE REQUIRED	\$ 33,000.00
AMOUNT BUDGETED	\$ 3,500,000
APPROPRIATION REQUIRED	\$ 0
LINE ITEM NUMBER	400-691.00-977.020

BACKGROUND INFORMATION:

A north-south regional pathway in the western portion of the City, known as the ITC Corridor Regional Trail, was included in the adopted City of Novi Non-Motorized Master Plan 2011. The proposed regional pathway would provide a connection between the ITC Community Sports Park and Maybury State Park to the south and the City of Wixom to the north. Phase 2 of the ITC Corridor Regional Trail continues the path north from the intersection of 9 Mile Road and Garfield Road to 11 Mile Road (just East of Wixom Road) which would complete the ITC Corridor Regional Trail.

The trail crosses a Michigan Department of Environmental Quality (MDEQ) regulated wetland, which requires permitting. The City was able to meet the requirements of the permit; however, due to the nature of the project, the MDEQ is requiring the City to either purchase 0.30 acres of Wetland Mitigation Credits from the Huron River Watershed Wetland Mitigation Bank (Capernall Farm) in the amount of \$33,000 or construct additional wetlands along the limits of the project which could cost upwards of \$100,000. The 0.30 acres of wetland mitigation credits would cover wetlands impacted during construction across the entire project limits. The purchase price is valid until March 15, 2019. Wetland Mitigation Credits are granted when a project has unavoidable ecological impacts to a resource area.

The attached Wetland Mitigation Sales Agreement identifies the mitigation credits earned. The proposed agreement has been reviewed and is recommended for approval by Engineering staff and the City Attorney (Beth Saarela, February 15, 2019).

RECOMMENDED ACTION: Approval to enter into an agreement to purchase 0.30 Acres of emergent wetland credits for the ITC Corridor Regional Trail Phase 2 project from the Huron River Watershed Wetland Mitigation Bank (Capernall Farm) in the amount of \$33,000.

ITC Corridor Regional Trail - Phase 2

Location Map



Map Author: Joseph Akers
Date: July 23, 2018
Project: ITC Corridor Regional Trail - Phase 2
Version: 1

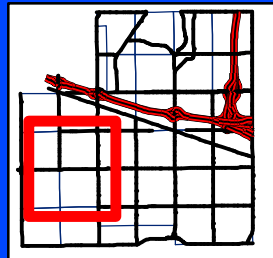
Amended By:
Date:
Department:

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



Proposed Trail Construction



City of Novi

Engineering Division
Department of Public Services
26300 Lee BeGole Drive
Novi, MI 48375
cityofnovi.org



1 inch = 1,521 feet



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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

February 15, 2019

Jeffrey Herczeg, Director of Public Works
City of Novi
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: ITC Corridor Regional Trail Project– Wetland Mitigation Credits (MDEQ)

Dear Mr. Herczeg:

As you are aware, the City's ITC Trail Pathway Project as proposed requires the City to impact .3 acres of MDEQ regulated wetlands within the project area. In order to comply with the Michigan Department of Environmental Quality's (MDEQ) Wetland Permit Conditions, the City is required to purchase .3 acres of emergent wetland through the MDEQ's authorized Huron River Watershed Wetland Mitigation Bank. Once the City purchases the credits, Niswander Environmental, the agent that coordinates the purchases on behalf of various wetland mitigation banks that participate, will confirm the purchase with the MDEQ. In connection with the City's purchase, we have reviewed the following enclosed documents:

1. Wetland Mitigation Sales Agreement between the City and the Wetland Bank
2. Bill of Sale
3. Niswander Environmental Draft Letter to MDEQ

The Wetland Mitigation Sales Agreement is an agreement between the City and the Capernall Farm Wetland Bank. The Agreement is for the purpose of selling the City .3 acres of emergent wetland, which will be maintained as wetland by the Banker—Capernall Farms. The Agreement is a standard purchase agreement that sets forth the parties, the cost of the purchase, and the timing of the issuance of the credits. The corresponding Bill of Sale provides for the sale of the "emergent wetland" area to the City for \$33,000.00. The Bill of Sale appears to act as more of a receipt for the purchase of credits rather than a document conveying any interest in land. On that basis, we see no legal impediment to entering into the Purchase Agreement with Capernall Farms with the issuance of the corresponding Bill of Sale.

Once the purchase is completed by transfer of the City's funds to the Wetland Bank's agent at Niswander Environmental, Niswander will issue the confirmation letter to the MDEQ.

Please feel free to contact me with any questions or concerns in regard to this matter.

Jeffrey Herczeg, Director of Public Works
City of Novi
February 15, 2019
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Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

Enclosures

- C: Cortney Hanson, Clerk (w/ Enclosures)
Charles Boulard, Community Development Director (w/Enclosures)
George Melistas, Senior Engineering Manager (w/Enclosures)
Joseph Akers, Staff Civil Engineer (w/Enclosures)
Sue Troutman, City Clerk's Office (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)



**NISWANDER
ENVIRONMENTAL**

Finding solutions in a complex world

9436 Maltby Road
Brighton, MI 48116
810.225.0539 *office*
810.225.0653 *fax*

www.niswander-env.com

_____, 2019

Mr. Michael Pennington
Michigan Department of Environmental Quality
525 West Allegan St.
Constitution Hall 4th Floor
Lansing, MI 48933

Subject: *Huron River Watershed Wetland Mitigation Bank*
MDEQ permit: WRP014244 v2.0 (63 ITC Transmission Corridor Pathway, 9 Mile Road to 11 Mile Road)
0.30 acres Credits Sold – Tracking Ledger and Sales Ledger

On behalf of Huron River Watershed Wetland Mitigation Bank (Capernall Farm, LLC), Niswander Environmental is pleased to submit this letter. The Michigan Department of Environmental Quality (MDEQ) released 2.14 acres of emergent wetland and 9.64 acres of forested wetland credits on April 16, 2018.

This letter certifies that the City of Novi has purchased a total of 0.30 acres of emergent wetland credits from the from the Huron River Watershed Wetland Mitigation Bank to partially meet the permit requirements of MDEQ Permit: WRP014244 v2.0 (63 ITC Transmission Corridor Pathway, 9 Mile Road to 11 Mile Road), which required the purchase of 0.30 acres of emergent wetland credits from the Huron River Watershed Wetland Mitigation Bank.

A copy of the Huron River Watershed Wetland Mitigation Bank Credit Tracking Ledger and Sales Ledger is attached.

Please feel free to contact me at 810-986-0218 if there are any questions or concerns. I look forward to our continued work with you on this project.

Sincerely,

Steven Niswander, Ph.D.
Professional Wetland Scientist #1276

Attachments: Huron River Watershed Wetland Mitigation Bank Credit Tracking Ledger and Sales Ledger

cc: John Skubina, MDEQ, without attachment
Jim Watley, MDEQ, without attachment
Phillip Vogelsang, AECOM, without attachment
George Melistas, City of Novi, without attachment

WETLAND MITIGATION CREDIT SALES AGREEMENT

This AGREEMENT is made by and between Capernall Farm, LLC (“Banker”) and City of Novi (“Buyer”).

WHEREAS the Michigan Department of Environmental Quality (“MDEQ”) has adopted a methodology for the establishment and operation of wetland mitigation banks including the sale of wetland mitigation credits, as set forth in the MDEQ Wetland Mitigation Banking Handbook (“State Guidance”) and in the Rules for the Establishment, Use, and Operation of Mitigation Banks promulgated under Part 303 Wetland Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended: (“Part 303 Rules”); and

WHEREAS, Part 303 provides in part for the issuance of Part 303 permits (that may require wetland mitigation), for the creation, operation, and certification of wetland mitigation banks, for the authorization of the use of wetland mitigation banks and the sale and purchase of wetland mitigation credits offered by certified mitigation banks to qualifying Part 303 permittees; and

WHEREAS, on April 10, 2017, Banker entered into a Wetland Mitigation Banking Agreement with MDEQ (the “Banking Agreement”), has created the Huron River Watershed Wetland Mitigation Bank (“Bank”) in compliance with the Part 303 Rules and the Banking Agreement, and has received certification from MDEQ for the Bank in accordance with the Part 303 Rules and the Banking Agreement; and

WHEREAS, the bank is located in the Huron River Mitigation Banking Watershed and the Maumee Lake Plain (VI.1.1) Ecoregion; and

WHEREAS, Buyer wishes to purchase from Banker wetland mitigation credits currently available from Bank and listed below (“Credits”) in accordance with the terms of this Agreement in order to meet the mitigation requirements of its Part 303 Permit, in full or in part, as set forth in Part 303 permit number: **WRP014244 v2.0 (63 ITC Transmission Corridor Pathway, 9 Mile Road to 11 Mile Road)** (“Permit”); and

NOW, THEREFORE, in consideration of the mutually binding covenants herein of the parties and in reliance on the foregoing representations by the Banker, it is agreed as follows:

1. Banker has successfully constructed and is and will continue to be solely responsible for all management and monitoring of the Bank as required by the Banking Agreement and Part 303 Banking Rules.
2. Banker agrees to sell, and Buyer agrees to purchase the following Credits:

0.30 acres of emergent wetland credit
Total 0.30 acres of wetland credit

for the Purchase Price of \$110,000.00/acre for emergent wetland, for a Total Purchase Price of Thirty-Three Thousand Dollars and No Cents (\$33,000.00) (“Total Purchase Price”). It is understood and acknowledged that this Agreement constitutes an irrevocable commitment by Buyer to purchase and also an irrevocable commitment by Banker to sell the Credits and to manage and monitor the Bank in accordance with the Banking Agreement and Part 303 Banking Rules.

If the final mitigation requirements in the issued MDEQ permit change, the Total Purchase Price will be adjusted up or down for additional credits at the current Purchase Price. Until March 15, 2019 the Purchase Price is \$110,000.00/acre for emergent wetland.

3. The terms and conditions of this Agreement are valid until March 15, 2019. In the event this agreement is not signed by both parties by March 15, 2019, it is considered null and void.
4. Transfer of the Credits to Buyer and payment of the Purchase Price to Banker shall occur within 30 days or the issuance of a draft MDEQ permit.
5. Banker may convey, assign or transfer the Bank property and/or long-term management of the Bank with approval of the MDEQ and execution of transfer agreements approved by the MDEQ.
6. Buyer’s rights and obligations under this Agreement shall not be assigned, transferred, pledged, encumbered or in any way restricted without the prior written consent of Banker (such approval not to be unreasonably withheld or delayed), and, if required under any applicable rules, regulations and policies, without prior written approval of the MDEQ.
7. All notices to the parties pursuant to this Agreement shall be personally delivered or sent by certified mail, return receipt requested, to the following address:

If to Banker: Capernall Farm, LLC
c/o Niswander Environmental
9436 Maltby Road
Brighton, MI 48116

If to Buyer: City of Novi
Attn: George D. Melistas
26300 Lee BeGole Drive
Novi, MI 48375 USA

Notice sent by certified mail shall be effective on the third business day following the date of mailing. The parties may change the address to which notice must be sent under this Agreement by written notice to the other party.

8. (A) Buyer shall be solely responsible for determining whether the Bank's Credits will be suitable for the Buyer's purpose, and except as set forth in Paragraph 8(B), neither the Bank nor the Banker represent or warrant in any way the suitability of the Credits to fulfill the Buyer's obligation and/or its Part 303 Permit conditions.

(B) Banker warrants and represents to Buyer that: i) Bank has been duly certified by the MDEQ in accordance with Part 303 Rules and the corresponding Banking Agreement and will continue to be so certified; ii) Bank is in full compliance with the Part 303 Rules and Banking Agreement; and iii) at the time of payment for the Credits that are the subject of this Agreement, they have been released by MDEQ and are currently available for sale.

9. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, representatives and permitted assigns. The parties have reviewed this Agreement and have had the opportunity to have their respective legal counsel review the same. The drafting of this Agreement shall be deemed to have been mutual by the parties. The parties agree that the laws of Michigan control the interpretation of this Agreement, and that venue is proper in Livingston County Circuit Court. Buyer is specifically entitled to the remedy of specific performance if Banker breaches this Agreement to transfer or buy back the Credits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written below.

BANKER

BUYER

Capernall Farm, LLC
By: Steven F. Niswander, Member

Dated: _____

City of Novi
By: _____

Its: _____

Dated: _____

Capernall Farm, LLC
Angela C. Niswander, Member

Dated: _____

BILL OF SALE

TO: **City of Novi**
 Attn: George D. Melistas
 26300 Lee BeGole Drive
 Novi, MI 48375 USA

FROM: **Capernall Farm, LLC**
 c/o Niswander Environmental
 9436 Maltby Road
 Brighton, MI 48116

DATE: _____

Subject to the terms and conditions of that certain Wetland Mitigation Credit Sales Agreement, dated _____ between Buyer and Seller, and for the consideration of the sum of \$110,000.00/acre for emergent wetland (Purchase Price), for a Total Purchase Price of Thirty-Three Thousand Dollars and No Cents (\$33,000.00) (“Total Purchase Price”), receipt of which is hereby acknowledged, Seller hereby sells 0.30 acres of emergent wetland located in the Huron River Watershed Wetland Mitigation Bank to Buyer.

Capernall Farm, LLC
By: Steven F. Niswander

Capernall Farm, LLC
Angela C. Niswander