

Department of Natural Resources Southeast Region

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Subject: _____

From: C. Krohn Phone #: _____

Date: _____ Number of Pages (including Cover Sheet) _____

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CORRESPONDENCE/MEMORANDUM**State of Wisconsin**

DATE: October 24, 2005

FILE REF: 3500

TO: Gloria McCutcheon and Charles Krohn

FROM: Sharon Gayan, Milwaukee River Basin Leader SLG

SUBJECT: Elm Grove-MOU

Attached is the Memorandum of Understanding (MOU) between the Village of Elm Grove (Village) and the Department of Natural Resources (Department). The MOU was established as part of the Department's Chapter 30 review of the Village's Underwood Creek Flood Management Project. The MOU documents the Department's position of an enclosure of Underwood Creek and establishes an agreed upon protocol for the Village to remove the enclosure. The MOU assures a commitment from the Village to work cooperatively on daylighting the stream.

A public hearing was held on October 19, 2005, on the Chapter 30 permit and Environmental Assessment for the Village's Underwood Creek Flood Management Project. A Chapter 30 permit will be issued for the project following the 30 day public review period.

The MOU was reviewed by the Department's legal staff and the Village's legal staff.

The MOU requires the signature of Secretary Scott Hassett and the Village President Neil Palmer. The MOU needs to be routed to the Secretary's office after our review in the Southeast Region. The MOU should be signed by all parties prior to the Chapter 30 permit being issued on November 15, 2005.

I am available to discuss the MOU and the Flood Control Project with you at your convenience. Thank you.

**Memorandum of Understanding
Relating to the Modification and Naturalization of
Underwood Creek, Elm Grove, WI**

The Department of Natural Resources (Department) and the Village of Elm Grove (Village), hereinafter collectively called the "Parties", enter into this memorandum of understanding (MOU) for the purpose of implementing a systems wide approach to managing flood waters and recognizing the need to protect overall public interest in Wisconsin's waters, more specifically a portion of the Underwood Creek in downtown Elm Grove, and thus achieving permit compliance for a project relating to flood management in the Village of Elm Grove.

Whereas, the Parties have had numerous discussions pertaining to the relationship between the Village's Underwood Creek Flood Management Project and the daylighting of the enclosure of Underwood Creek in the Village's downtown, and

Whereas, the Department is reviewing the Village's Underwood Creek Flood Management Project as a systems level project, and

Whereas, the Department believes that daylighting of the enclosure is necessary to mitigate potential environmental impacts of the Village's Flood Management Project, and

Whereas, the Department is requiring, as a condition of issuing a Chapter 30 permit to the Village for flood management work along Underwood Creek, that the Village enter into a MOU with the Department regarding daylighting Underwood Creek, and

Whereas, the Department recognizes that the enclosed portion of the Underwood Creek is not owned or controlled by the Village, and

Whereas, the Parties understand that the Department considers the enclosure to be an unpermitted structure and therefore a violation of Wisconsin State Statute Chapter 30, and

Whereas, the Village understands that any work, including repairs or modifications, done to enclosure requires Department authorization, and

Whereas, the Department views the enclosure to be a detriment to public interest, an obstruction to navigation and an obstruction to flood flow capacity, and

Whereas, the Village understands that the Department intends to not permit any future repairs or modifications to the enclosure. The Department may approve temporary repairs or modifications outside of routine day to day maintenance under emergency circumstances for the purpose of maintaining public safety and business access, and

Whereas, the Village understands that it is the intention of the Department at the time of any necessary repairs or modifications to pursue removal of the enclosure, and

Whereas, the Department understands and accepts the timing, property acquisition and funding restrictions of accomplishing the removal of the enclosure and daylighting the Underwood Creek, and

Whereas, the Department has been advised that the Village will not utilize its power of eminent domain for the purpose of a non-voluntary acquisition to accomplish the daylighting of the Underwood Creek, and

Whereas, the Village does not dispute the potential of long term benefit to overall public interest in the elimination of the Underwood Creek enclosure, and

Whereas, the Village understands the necessity of cooperation with the Department in permitting the daylighting of the Underwood Creek as a public entity, and

Whereas, the Village recognizes the need to coordinate this effort as the local governmental agency, and

Whereas, the Village agrees to continue, through its best efforts, negotiating a process for daylighting Underwood Creek with the current and future landowners of the subject property, and

Whereas, the Village agrees, through its best efforts, to keep the Department informed of discussions with the subject property owner, and

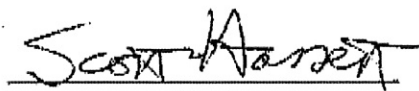
Now Therefore, in an effort to achieve the goals of the Department in daylighting Underwood Creek, the protection of private and public property through the flood management project and protecting the long term economic viability of the Village's downtown area the Parties to this MOU do hereby agree as follows:

1. All parties shall work cooperatively in proceeding to a final design of the daylighting and relocation of Underwood Creek in the approximate configuration as detailed in Attachment A. Final stream design will depend on flow, space, water quality, fish and wildlife habitat and overall public interest. Final design of the stream shall meet applicable state permit standards. It is further understood that the profile under Attachment A provides the maximum amount of green space and vegetative buffers in this area of the Underwood Creek. Furthermore the profile limitations may be modified for the express purpose of maximization of use of the adjoining property owners.
2. The Village will undertake the coordination and planning for the daylighting of the Underwood Creek. It is understood by the parties, that any such work undertaken by the Village will only be performed to the extent that funds are available. However, such project, including any land acquisitions, engineering, and construction that may be performed by the Village shall not be funded by general tax revenue from the Village.

3. The Department shall work cooperatively with the Village to secure and provide outside sources of funds for the purpose of funding the daylighting project. The Department also understands that the Village will proceed with the project only if it can be directly coordinated with the Village's replacement of the Watertown Plank Road bridge and the secured funding for the project from the Wisconsin Department of Transportation (WDOT). The Village shall include the Department in all discussions with the WDOT which pertain to scheduling of this project.
4. The Parties will work to secure funding for the planning and engineering portion of the daylighting. Once funding is secured the Parties will work diligently toward the goal of daylighting the Underwood Creek with the Village being project coordinator. All staff time shall be considered as financial contribution toward this project for the purpose of computing financial commitment. The Parties will work to have a project plan in place no later than December 31, 2008.
5. The Parties shall work cooperatively to secure financing for the final construction portion of the project through all practical means including grants from various agencies, in kind contributions; direct monetary contributions from the parties within the parameters of the previous restrictions outlined in numbers 2 and 3 above
6. When all financial and project components are in place the Village agrees to either individually or cooperatively with the property owner be the permit applicant and cause to have performed all the necessary construction for completion of the project, in a timely manner.
7. The Village shall notify, in writing, all of the current property owners along the current enclosure and the proposed open stream bed of this MOU and provide copies of the agreement and the current plans.
8. This MOU is effective upon the date of signature by all Parties. This MOU constitutes the total agreement as it relates to this matter and may only be modified in writing upon the agreement of all Parties.
9. This MOU shall be governed by and construed in accordance with the laws of the State of Wisconsin and shall be binding on all Parties and their heirs and assigns. Signatures of officials constitute a certification that the signature has been appropriately authorized.

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IN WITNESS HEREOF, the Parties have caused this Memorandum of Understanding to be signed by:


Department of Natural Resources
Scott Hassett, Secretary

Date: 11/9/05

Village of Elm Grove
Neil H. Palmer, Village President

Date: _____

