



# Minnesota Mitigation Newsletter

U.S. Army Corps of Engineers & MN Board of Water and Soil Resources

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## 2021 Mitigation Banking Webinars

The COVID-19 pandemic has significantly limited opportunities to hold in-person outreach like the 2019 joint agency sessions. In response, the U.S. Army Corps of Engineers St. Paul District (Corps) and Minnesota Board of Water and Soil Resources (BWSR) will offer webinars during 2021 to share information on mitigation topics, agency updates and agency procedures. Each webinar will run between 60 and 90 minutes and will focus on case studies that highlight application of a specific topic. The agencies will encourage questions and participant interaction from bankers, consultants and agency staff.

Please submit suggestions for session topics to Leslie Day ([leslie.e.day@usace.army.mil](mailto:leslie.e.day@usace.army.mil)) or Tim Smith ([tim.j.smith@state.mn.us](mailto:tim.j.smith@state.mn.us)). We will include the option to use video during the sessions and look forward to seeing you soon!



## Mineral Rights

The Federal Mitigation Rule identifies mineral extraction as an incompatible use for a compensatory mitigation site (CFR 332.7 (a)(2)). Mineral extraction is also a prohibited activity in the standard wetland bank conservation easement used in Minnesota. Mineral rights are property rights that exist on every property and are related to the extraction of underground resources such as iron ore or natural gas. Mineral rights pose a problem for compensatory mitigation projects when those rights have been severed and legally claimed by someone other than the fee title owner of the property. Sponsors must address severed mineral rights, usually by purchasing the rights, before a compensatory mitigation site is approved.

Identifying severed mineral rights issues early is important so sponsors can take steps to ensure there is no future mineral extraction that would jeopardize compensatory mitigation sites. Sponsors should obtain a title opinion to assess mineral rights prior to submission of a Prospectus. Sponsors should discuss title opinion results, if available, in the easement description section of a bank review document.



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# Upland Buffer Apportionment

Compensatory mitigation sites can generate credit from upland buffer areas, so long as those areas protect the aquatic resources from effects of adjacent land uses. Upland buffer apportionment is the process whereby credits associated with upland buffer areas are distributed across the wetland types planned for a site, with apportionment based on each wetland types' proportion of the total wetland area.

Upland buffer apportionment is comprised of calculations that convert a site's upland credits to wetland credits. In the example below, a total of 2.0000 credits are generated from upland buffer (8 acres x 25%). The amount of each wetland type (5 acres shrub carr; 15 acres wet meadow; 5 acres hardwood swamp) is divided by the total wetland area (25 acres), resulting in 20, 60 and 20 percent, respectively. Projected credits associated with the 2.0000 upland credits are then calculated in the last column by apportioning 20, 60 and 20 percent to shrub-carr, wet meadow and hardwood swamp. Note also, sponsors should distribute the resulting apportioned credits across all releases in the bank's credit release schedule.

Credit Action	Total Acres	Type of Wetland Credit	Credit Amount	Projected Credits
Re-establishment/ Restoration of Completely Drained Wetland	5	Shrub-carr	100%	5.0000
Re-establishment/ Restoration of Completely Drained Wetland	15	Wet Meadow	100%	15.0000
Rehabilitation/ Restoration of Partially Drained Wetland	5	Hardwood Swamp	50%	2.5000
Upland Buffer (may not contribute to more than 25% of total bank credits)	8	Shrub-carr	20%	0.4000
		Wet Meadow	25% 60%	1.2000
		Hardwood Swamp	20%	0.4000
<b>Total</b>	<b>33</b>			<b>24.5000</b>

# New Draft Prospectus Template

BWSR and the Corps released a new version of the Draft Prospectus template in July 2020. The agencies made updates in response to suggestions from wetland professionals who frequently use this phase of the review process. After considering what details are most informative to our feedback on site viability and potential to generate compensatory mitigation credit, we modified the template to collect information in the following three main areas: historical and current site conditions, actions proposed to generate credits, and project expectations upon completion.

The revised template focuses on information readily available to sponsors without the need for technical support from an engineering firm or a wetland professional. The agencies removed some items that are deferred until the Prospectus phase, expanded the list of questions about site characteristics, and reduced the number of required maps and figures to include only site location map, a project and boundary map, and a simple project illustration. The template is available on the *WCA Forms and Templates* section of the BWSR website.



## Frequently Asked Questions



### *What is an acceptable hydrology release amount?*

Prior to 2019, the agencies generally limited hydrology releases to 20 percent of the project's total projected credits. In 2019 BWSR and the Corps communicated that larger hydrology releases can be approved for certain types of projects based on the degree of hydrology lift associated with the project. Generally, hydrology releases can range from 20 to 45 percent, with the higher percentage associated with projects where the lift is greatest (re-establishment of completely drained wetlands). Projects with a moderate level of hydrology lift (e.g. a combination of re-establishment and rehabilitation) may receive 30-35 percent release of the total credits. Projects consisting entirely of rehabilitation, or lesser amounts of lift, would receive a 20 to 25 percent release. Bank sponsors are responsible for providing justification for the hydrology release amount, and should include supporting information in Prospectus and Mitigation Plan submittals.



# BWSR Wetland Banking Database Update

BWSR is upgrading their wetland banking database and expects the process to conclude this winter. The updated database will continue to provide account and transaction management capabilities for the Minnesota Wetland Bank but will also add several new functional areas including the tracking of the wetland bank plan reviews, transaction fee management, and an EPA-funded long-term condition monitoring data submission and retrieval module. BWSR expects the new database to go live in January of 2021. There will be a short period of time where no transactions will be processed to allow for the migration of data to the new application. BWSR will post updates on the transition to the new database on its webpage as the date approaches.

## Training & Events

In July, BWSR announced the cancellation of all Minnesota Wetland Professional Certification Program (MWPCP) classes and certification exams that were scheduled for 2020, including those slated for September (14-18 in Brainerd and 23-24 in Bemidji). There are no plans to reschedule or otherwise conduct any in-person training classes in 2020 due to the ongoing COVID19 concerns. Additional information on the MWPCP is provided on the BWSR website.

## Transaction Processing Times

The COVID19 pandemic has increased the processing time associated with wetland bank transactions. Because of limited access to our offices the turnaround time for withdrawals and deposits is currently from 7 to 14 days after receipt. We continue to adapt to this new way of doing business and appreciate your continued patience. *BWSR Wetland Banking Staff*

## Corps Prospectus Letters

Following the IRT's review of a Prospectus, the Corps makes a decision on whether the site, as currently proposed, has potential to generate wetland or stream compensatory mitigation credits. When the Corps determines that a project does not have potential, we will provide the basis for this determination. A decision that the site has no potential at Prospectus means that the sponsor cannot submit a draft MBI for that proposal. Instead, the sponsor has the opportunity to provide any additional information not available to the Corps in making this determination or to submit a revised prospectus addressing the concerns identified in the Corps' decision.

Site selection is one of the most important factors that influences whether a project will have potential as a compensatory mitigation project. The federal compensatory mitigation rule addresses factors the sponsor should consider during site selection (33 CFR 332.3(d)). To further aid sponsors in successful site selection, the Corps is developing a checklist of wetland and stream compensatory mitigation site selection criteria. This checklist will help project sponsors identify sites that are ecologically suitable, meet the needs of the watershed, meet minimum regulatory requirements and avoid common "fatal flaws" that can prevent site approval. The Corps will post the checklist on our website when completed and we will discuss it at a future webinar. We will apply this tool when evaluating site potential and refer to it when making decisions that sites do not have potential.



# BWSR Completes Selections for the 2020 Easement Sign-up Period/RFPs and Receives Additional Funding for the Local Government Road Wetland Replacement Program

BWSR opened a conservation easement sign-up period and issued three requests for proposal (RFP) on March 9, 2020 all aimed at acquiring credits to offset road improvement projects in Minnesota. The opportunities for participation included the purchase of wetland credits from existing bank accounts and three wetland restoration project options. BWSR has completed credit purchases from wetland bank account holders in bank service areas 4, 5, 7, and 9 and is finalizing agreements with other selected applicants to begin project development activities in bank service areas 1, 3, 7, and 9. Summaries of the results for each option are posted on the Local Government Road Wetland Replacement Program page on the BWSR website. Thanks to all of those who submitted applications and expressed an interest in participating in this program.

On October 21, 2020 Governor Walz signed a \$1.87 billion bonding bill into law that included \$23 million for the Local Government Road Wetland Replacement Program (LGRWRP) administered by BWSR. The funding is desperately needed to replenish the supply of wetland credits for the program in the ten wetland bank service areas across the State. BWSR staff are working on the framework for a 2021 Easement Sign-up Period and RFP to acquire wetland credits through direct purchase from existing wetland bank accounts and the development of wetland mitigation bank sites. BWSR expects the easement sign-up period and RFP to be issued early in 2021. Additional information on the geographic scope and the options available to applicants in each area will be communicated in advance of the issuance date.



Ogema Investors LLP and BWSR began construction of the Ogema Wetland Bank in early November. BWSR identified the project through the 2018 easement sign-up period and received approval of the mitigation plan from the WCA local government unit and the Corps in 2020. The 173-acre project is located in Becker County in Bank Service Area 4 and will generate approximately 87 wetland credits for the LGRWRP. The photograph to the left shows the beginning of grading work at the site.