US Army Corps of Engineers
St. Paul District

Special Public Notice

ISSUED: March 4, 2013
EXPIRES: March 1, 2015

Guidance regarding use of Wetland Preservation For Mitigation Banking in Minnesota

This is a reissuance of guidance developed by the U.S Army Corps of Engineers, St. Paul District regarding the use of wetland preservation for mitigation banking. The initial guidance was issued May 13, 2011 and comments were accepted until May 12, 2012. This guidance incorporates many of those comments. As indicated in the District Mitigation Policy, wetland preservation may be considered statewide for compensatory mitigation. This guidance therefore applies statewide. However, due to the interest in wetland preservation for mitigation banking in northern Minnesota, this notice focuses on the Great Lakes Basin and Rainy River Basin Wetland Bank Service Areas (BSA 1 and 2). These Bank Service Areas are located in Northeastern Minnesota and consist of all or parts of Carlton, Aitkin, Itasca, Koochiching, Beltrami, Lake of the Woods, Roseau, St. Louis, Lake, and Cook Counties (Figure 1). The guidance contained in this notice provides clarification on the use of wetland preservation as a component of watershed-based compensatory mitigation when other options for wetland compensation are limited or not practicable. The guidance contained in this notice does not replace the District's current compensatory mitigation policy for Minnesota. Rather, it provides additional clarification regarding the use of preservation as a form of compensatory mitigation. More specifically, this notice addresses when preservation can or should be used and the amount of preservation credit a bank sponsor can reasonably expect to receive under different scenarios. As elaborated throughout this notice, a high standard for eligibility is required for wetland preservation. Sites that are not currently functioning at a high level and are not under demonstrable threat are not eligible. Hence, many proposals will not be eligible to receive credit for preservation. Some proposed preservation sites may require rehabilitation and may be better candidates for enrollment as another type of mitigation such as enhancement or restoration.

Within the Great Lakes and Rainy River drainage basins over 80% of pre-European settlement wetlands remain on the landscape. Further, intensive agricultural and urban impacts to wetlands are not as common in these areas as compared to the remainder of the state. Although there is some recent evidence of potential for wetland restoration/enhancement/creation in BSAs 1 and 2, finding practicable sites for wetland restoration/enhancement/creation can be difficult.

In addition, there are many unique and difficult to replace wetland communities within BSA 1 and 2 such as white cedar swamps, hardwood swamps, coniferous bogs, open bogs and unique wetland complexes such as patterned peatlands, all of which provide important physical, chemical and biological functions to a watershed. For these reasons, wetland preservation helps to maintain existing

high quality wetland functions within the Great Lakes and Rainy River drainage basins by preventing future losses.

Figure 1: Map of BSA 1 & 2

Preservation is defined in the Corps regulations as the "removal of a threat to, or preventing the decline of, wetland/aquatic functions by an action in or near those resources" (33 CFR 332.2). Preservation helps sustain wetland/aquatic resources by removing or reducing the threat of stressors. Unlike wetland restoration, wetland preservation's main purpose is to prevent the future loss of wetland/aquatic resources as opposed to providing a quicker gain in acreage and function. Although preservation does not contribute in the near term to the Federal "no net-loss" goal, the value of preservation lies in preventing the future loss of valuable wetlands and associated functions/services.

While the District recognizes preservation as an important tool in the watershed approach to wetland compensation, there may be situations where preservation of wetlands is not the most appropriate approach to wetland mitigation. For example, when restoration opportunities are available at or nearby an impact site, preservation may not be the preferred method of mitigation. A preservation site that is under no demonstrable threat, and is not providing important functions would also not be an appropriate preservation site.

When proposing a preservation site for District-approved mitigation credit, the bank sponsor should provide supporting evidence that the wetland is: (1) under demonstrable threat of degradation or destruction; and (2) will provide important functions for the watershed (33 CFR 332.3(h)). These are the two *minimum* standards for wetland preservation credit, and it is solely the bank sponsor's responsibility to demonstrate that both standards are met. Demonstrable threats may include: (1) activities not regulated by Section 404 but which can alter/degrade/destroy wetlands (e.g., certain agricultural, silvicultural, and excavation activities); and (2) case-specific situations where wetlands are within areas under intense development pressure. Figure 2 is intended to provide a quick assessment of whether a wetland preservation proposal meets minimum standards and would maintain wetland functions over time by reducing or removing threats from degradation or destruction. The assessment does not replace the need for on-site review, but can provide more meaningful results if employed by several reviewers. The District Project Manager and Technical Evaluation Panel for the Minnesota Wetland Conservation Act should be among the list of reviewers. These reviewers are also likely knowledgeable of watershed plans or studies that would aid in determining watershed-based wetland functions. A proposal yielding multiple "yes" responses from many reviewers likely warrants continued discussion.

Figure 2: Wetland Preservation Assessment

	Eligibility Criteria	Yes/No?	Rationale
1.	Proposed site provides important functions for the watershed (see question 1a).	(See 1a)	A minimum requirement from 33 CFR 332.3(h). A "yes" response is required.
	a. MnRAM score includes -- at a minimum -- one high and/or 3 medium ratings for function(s) deemed important for the watershed.		Use of MnRAM is more objective than sole reliance on personal opinion.
2.	Proposed site is under demonstrable threat of degradation or destruction (see questions 2a-2c)	(See 2a - 2c)	A minimum requirement from 33 CFR 332.3(h). A "yes" response is required.
	a. Current and projected land use or demographic trends indicate that the site is under demonstrable threat of degradation or destruction.		This criterion refers to the potential impact that development-related stressors pose to the functional integrity of the site.
	b. Local official controls provide inadequate protection from degradation or destruction.		Assesses whether local ordinances reduce the threat of degradation or destruction.
	c. State or federal wetland regulations provide inadequate protection from degradation or destruction.		Assesses whether state or federal regulations reduce the threat of degradation or destruction.
3.	Enrollment of the site reduces or removes the threat(s) from degradation or destruction.		Assesses whether enrolling the site will reduce or remove the threat(s). Perhaps due to an extreme threat nearby, maintenance of functional integrity will be very difficult to maintain even if the site is enrolled as a preservation area?
4.	Other actions eligible for credit have been considered and preservation will provide greater benefits to the watershed than other available wetland mitigation opportunities.		Assesses if other options for mitigation are available, and if so, whether they would provide greater benefits to the watershed.
5.	A wetland preservation site should not need restoration, enhancement, or management at the time of enrollment.		If this is not the case, the site may be better suited for another type of mitigation.
6.	It is likely that the bank sponsor/management entity will provide long term management as necessary in a timely manner.		Assesses whether the bank's sponsor/management entity is ready willing and able to provide the necessary management.
7.	It is likely that a mitigation banking instrument (MBI) will be signed by all parties.		Assesses whether all parties will agree to be bound by the conditions of the MBI.

The ideal is to include preservation as part of a compensation site package that also includes wetland restoration, enhancement and/or creation (332.3(h)). The District recognizes that, due to the landscape and land uses in BSAs 1 and 2, wetland restoration/enhancement/ creation opportunities can be limited. Additionally, targeting wetland preservation to currently high functioning wetlands under demonstrable threat means that there may be few to no opportunities for wetland restoration/enhancement/creation at those sites. However, preservation can serve as the sole component of a compensation site plan (332.3(h)).

District policy generally allows compensatory wetland mitigation credit for preservation at 12.5% or at a ratio of up to 8:1 (8 acres of preserved wetlands generates one compensation credit). This ratio is meant to be used as guide. Portions of a preservation site may qualify for varying credit ratios, as it is possible that different portions of the site provide different benefits and functions to the watershed[1]. Buffers (wetlands or uplands) must be a component of the wetland preservation site. Ideally, buffers should be no less than 300 feet in width; however, exceptions to this width may be made such as in the case of smaller sites or where topography limits the extent of buffer. Figure 3 illustrates examples of the compensation credit ratios which a bank sponsor may receive for buffer.

As previously stated, in most preservation proposals, other forms of mitigation such as wetland restoration, enhancement and creation may also occur on the site. These actions typically receive credit at higher ratios, as explained in the District's Policy for Wetland Compensatory Mitigation in Minnesota. Therefore, bank sponsors will be required to provide maps identifying boundaries and areas of all expected types of wetland mitigation proposed on the site.

Figure 3: Buffer Credit Ratio

Buffer Type	Compensation Credit Ratio (acres needed to generate 1 credit)	Examples
Current wetland of high quality, or an improved[2] wetland as determined by MnRAM	8:1 ↓	<5%[3] of vegetation is non-native and/or invasive
Current wetland of low quality and unimproved	10:1 or greater	>5% of vegetation is non-native and/or invasive
Uplands of high quality, or improved to high quality	4:1 ↓	<5% of vegetation is non-native and/or invasive
Uplands of low quality and unimproved	10:1 or greater	>5% of vegetation is non-native and/or invasive

[1] Larger sites will likely be diverse and heterogeneous such that functional quality will vary. Credit will be assigned based on the functional mix.

[2] More than minimal improvement would likely qualify for enhancement credit rather than preservation credit.
[3] Percent areal cover.

The bank sponsor should describe how the proposed preservation site will be maintained and managed long-term to ensure the vegetative community(-ties) and/or other functions will continue at a high level. Any management plan should include clear descriptions of any uses that the site may continue to serve, such as recreational trails for ATVs, snowmobiles, biking, walking, or cross country skiing. The bank site must be protected through a conservation easement. If a bank sponsor plans to transfer the title of the preservation site to a natural resource agency or private conservation organization, that organization may be required to be a signatory on the mitigation banking instrument (MBI) and/or on the conservation easement, to ensure that consistent long-term management will occur as specified in the mitigation or bank plan. Long-term management described in the MBI should occur based on specified time frames and not be dependent on the transfer to a new land steward in the event that such a transfer is delayed or withdrawn.

District review of a preservation proposal begins when the bank sponsor submits a complete bank prospectus[4]. A wetland mitigation bank prospectus *must* contain all the information described in the attached document *Detailed Use of Wetland Preservation in Mitigation Banking* -- *Attachment A*, in order to be deemed complete by the District. The bank sponsor should also be aware that the Minnesota Board of Water and Soil Resources (BWSR) has published detailed preservation guidance and related guidance concerning areas exhibiting Exceptional Natural Resource Value (ENRV). Although the BWSR and the District policies and process for preservation banking approval are similar, there are notable differences. Early coordination is encouraged. The BWSR guidance can be accessed at:

www.bwsr.state.mn.us/wetlands/wetlandbanking/forms.html

IF YOU HAVE QUESTIONS ABOUT THE GUIDANCE, you may contact Tom Mings at the St. Paul District office, telephone number (651) 290-5365.

Tamara E. Cameron
Chief, Regulatory Branch

Enclosures:

Attachment A: Detailed Use of Wetland Preservation in Mitigation Banking
Attachment B: Questions

[4]As used here, "prospectus" means a Wetland Mitigation Bank Plan Application Part A.

Detailed Use of Wetland Preservation in Mitigation Banking

Attachment A

A complete prospectus for use of wetland preservation in mitigation banking must contain all the information described below:

(1) Identification of the bank sponsor, landowners, any agent for the bank sponsor, and any likely long-term site managers or stewards.

(2) Identification of consultants or experts to be involved in development and implementation of the bank site, their qualifications and their roles, including information describing any past activities by the bank sponsor or team members associated with a wetland banking project.

(3) A description of the broad purpose and specific objectives of the proposed mitigation bank.

(4) A MnRAM evaluation of the site. As part of the MnRAM assessment, a survey of T/E/SC plant and animal species is encouraged.

(5) Maps containing the location of the proposed mitigation bank that include the information described below (the boundaries of the proposed site must be clearly designated on each map).

- USGS topographic map
- National Wetland Inventory (NWI) map
- A wetland determination or delineation
- USDA soil survey map that shows soil map units (w/ legend, series descriptions), include a list of map units that are:
    - Predominantly hydric (list % hydric soil series in map unit)
    - Have some portion hydric (list % hydric soil series in map unit)
    - Predominantly non-wetland (list % non-hydric soil series in map unit, if any)
- Recent aerial photograph(s)
- County highway map
- Plat map or other land ownership map
- Land-cover/land-use map (where available)
- Locations of recent and potential demonstrable threat(s) such as a drainage ditch subject to maintenance actions approved by a drainage authority, an approved plat for development or a forested tract with an approved logging contract
- Boundaries of all proposed wetland mitigation types (preservation, restoration, buffer, enhancement and so forth)

(6) A narrative which describes how wetland preservation will be accomplished and, to the extent possible, addresses the following points:

- Describe how the mitigation bank will be established and operated; include a general description of how preserved acres would be monitored on the bank sponsor's behalf to ensure that the property maintains wetland functions (e.g. ensure continued high quality of protected vegetation, ensure trespass damage has not occurred)
- Describe the existing wetland and upland plant communities, including acreage of each

- Describe the existing land use
- Provide written documentation of demonstrable threat(s)-in addition to the maps in part (5)
- Describe any management that is envisioned for the site, including the goals of that management
- Describe how reasonably foreseeable catastrophic events would be dealt with (e.g. would accidental fire be allowed to burn through the site? Would timber management be allowed to prevent emerald ash-borer infestation? Would sites be replanted or reseeded?)
- Describe how funds -- if needed -- will be managed to ensure timely and adequate management, monitoring and other contingencies[1]
- Describe how the proposed preservation project will maintain specific wetland functions and services
- Specify the proposed ownership arrangements and long-term management strategy for the mitigation bank
- Explain the general need for the proposed mitigation bank (e.g., there are currently no banks located in this bank service area; wetlands of the types proposed to be preserved are difficult to restore and opportunities to restore are rare in this bank service area)

[1] Given the high quality and function of preservation sites, funding for the long-term management should be minimal.

Attachment B

Questions

1. I have a potential wetland preservation site not located in Bank Service Area (BSA) 1 or 2 that I am considering for a compensatory mitigation bank. How does the guidance apply to this site?
   As stated on page 1, the guidance applies statewide in Minnesota. However, areas outside BSA 1 and 2 may have more mitigation opportunities available in addition to preservation such as enhancement or restoration.
2. Is wetland preservation an option for compensatory mitigation if used on a project-specific basis?
   Yes, although as stated in the District Compensatory Mitigation Policy for Minnesota, project-specific compensation is lower in preferential sequence than mitigation banking.
3. I have a potential site and have questions. Who do I contact?
   Contact the District Project Manager for the County where the site is located.